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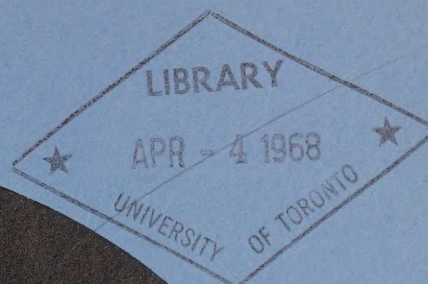
Ontario Labour relations board
Report
1968



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JANUARY, 1968



ONTARIO

Monthly Report

ONTARIO LABOUR RELATIONS BOARD

CASE LISTINGS JANUARY 1968

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JANUARY 1968

BARGAINING AGENTS CERTIFIED DURING JANUARY

NO VOTE CONDUCTED

13792-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE HYDRO-ELECTRIC COMMISSION OF THE TOWNSHIP OF NEPEAN (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ITS OFFICE ON MERIVALE ROAD AT OTTAWA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, SECRETARY TO THE GENERAL MANAGER AND SECRETARY TO THE ASSISTANT GENERAL MANAGER."
(15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13798-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. CANADIAN HANSON & VAN WINKLE COMPANY, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE BOROUGH OF ETOBICOKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, TECHNICAL AND ENGINEERING DEPARTMENT STAFF AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD."
(100 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 963).

13803-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. NORMAC EQUIPMENT CONSTRUCTION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A FIFTY MILE RADIUS FROM THE TIMMINS FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (29 EMPLOYEES IN THE UNIT).

13916-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ESSEX HEALTH ASSOCIATION (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 210 (INTERVENER #1) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 102 (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, STUDENT NURSING ASSISTANTS, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 210 AND CANADIAN UNION OF OPERATING ENGINEERS LOCAL 102, RESPECTIVELY, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 20 HOURS PER WEEK." (40 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 974).

13921-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. PROVIDENCE VILLA & HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE BOILER ROOM OF THE RESPONDENT'S PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER, AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

13922-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CANADIAN CHROMALOX COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, LABORATORY TECHNICIANS, MODEL ROOM TECHNICIANS, EMPLOYEES IN THE ENGINEERING DEPARTMENT, REGISTERED NURSE, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (288 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT QUALITY CONTROL INSPECTORS ARE INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 980 ,).

13926-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 729 (APPLICANT) V. ST. MARY'S OF THE LAKE HOSPITAL (RESPONDENT) V. CANADIAN UNION OF GENERAL EMPLOYEES (INTERVENER) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT THE CHIEF ENGINEER, PERSONS ABOVE THE RANK OF CHIEF ENGINEER, AND ENGINEERS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13929-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. ST. LAURENT SHOPPING CENTRE LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT THE ST. LAURENT SHOPPING CENTRE AT OTTAWA, SAVE AND EXCEPT THE CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED AS FIREMEN ARE INCLUDED IN THE BARGAINING UNIT.

13941-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. KELSEY-HAYES CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PRIVATE SECRETARY TO THE PRESIDENT, PRIVATE SECRETARY TO THE VICE-PRESIDENT, PRIVATE SECRETARY TO THE SECRETARY-TREASURER, STUDENTS EMPLOYED ON A UNIVERSITY CO-OPERATIVE BASIS, NURSES AND EMPLOYEES OF THE RESPONDENT IN THE LABOUR RELATIONS DEPARTMENT." (37 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES AS CONTAINED IN THE LETTER DATED JANUARY 9TH, 1968 SIGNED BY THE PARTIES).

13951-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INSPIRATION LIMITED, MINING SERVICES DIVISION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY SAVE AND EXCEPT PLANT ENGINEER, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (33 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 982).

13981-67-R: NURSES' ASSOCIATION ELGIN-ST. THOMAS HEALTH UNIT (APPLICANT) V. THE ELGIN-ST. THOMAS HEALTH UNIT (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS OF NURSES AND PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSES." (10 EMPLOYEES IN THE UNIT).

13985-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. PAUL GIRARD COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIPS OF BUCKE, COLEMAN AND LORRAIN IN THE DISTRICT OF TIMISKAMING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES AS TO THE APPROPRIATE GEOGRAPHIC AREA IN THIS CASE.

13990-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. THE HONDERICH FURNITURE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS FRY AND BLACKHALL DIVISION AT WINGHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (23 EMPLOYEES IN THE UNIT).

13993-67-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. WEST YORK CONSTRUCTION, LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

13994-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. E.S. MARTIN CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

13995-67-R: LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION, LOCAL 12-L (APPLICANT) V. CONTINENTAL CAN COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL LITHOGRAPHIC PREPARATORY PRODUCTION EMPLOYEES AND THEIR APPRENTICES OF THE RESPONDENT AT ITS PLANT PRESENTLY LOCATED AT 7250 KEELE STREET IN THE TOWNSHIP OF VAUGHAN, SAVE AND EXCEPT ASSISTANT ART DIRECTORS, SUPERVISORS, PERSONS ABOVE THE RANK OF ASSISTANT ART DIRECTOR AND SUPERVISOR, AND OFFICE AND CLERICAL STAFF." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

13999-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. VROOM CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14000-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. B H. CONSTRUCTION INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (16 EMPLOYEES IN THE UNIT).

14002-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) V. WHITAKER CABLE OF CANADA, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR AND OFFICE AND SALES STAFF." (89 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 990).

14005-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. FRANKEL FORMWORK COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (38 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 993).

14011-67-R: NURSES' ASSOCIATION LONDON BOARD OF EDUCATION (APPLICANT)
V. THE BOARD OF EDUCATION FOR THE CITY OF LONDON (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE
RESPONDENT, SAVE AND EXCEPT SENIOR NURSE AND PERSONS ABOVE THE RANK
OF SENIOR NURSE." (36 EMPLOYEES IN THE UNIT).

14013-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 2486 (APPLICANT) V. INDUSTRIAL-MINE INSTALLATIONS LIMITED
(RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF
THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF
SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND
PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (24 EMPLOYEES IN THE
UNIT).

(SEE INDEXED ENDORSEMENT PAGE 995).

14016-67-R: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA,
A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. UNIT STEP (ONTARIO) LIMITED
(RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT
ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN,
CLERICAL, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL
VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24
HOURS PER WEEK." (34 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14031-67-R: THE BRICKLAYERS MASON'S AND PLASTERERS INTERNATIONAL UNION
OF AMERICA LOCAL #30 (APPLICANT) V. CHARLES W. LAMBERT LIMITED
(RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND
STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE
EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE,
MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY,
THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS
OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF
NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE
THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14035-67-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF
ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. WOODSTOCK PUBLIC
UTILITY COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT
NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN,
AND OFFICE AND SALES STAFF." (26 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14036-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. WHITBY BOAT WORKS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (69 EMPLOYEES IN THE UNIT).

14041-67-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE ST. MARY'S SEPARATE SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CAPREOL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PROFESSIONAL TEACHING STAFF." (2 EMPLOYEES IN THE UNIT).

14042-67-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. THE CAPREOL BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CAPREOL, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PROFESSIONAL TEACHING STAFF." (7 EMPLOYEES IN THE UNIT).

14045-67-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) v. NORTHERN & CENTRAL GAS CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KAPUSKASING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

14047-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #397 (APPLICANT) v. THE MITCHELL CONSTRUCTION COMPANY (CANADA) (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

14048-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) v. M & T PRODUCTS OF CANADA LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(26 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS CLERICAL STAFF, TECHNICIANS, QUALITY CONTROL LABORATORY STAFF, RESEARCH LABORATORY STAFF AND CUSTOMER SERVICE EMPLOYEES ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

14051-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. QUINTE TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

14052-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. BORG-WARNER (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS CELLO PRODUCTS (PRESTON) DIVISION OF LONG MANUFACTURING DIVISION OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (102 EMPLOYEES IN THE UNIT).

14053-67-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V. DAISONS PRESS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS PROOFREADERS AND PASTE-UP MEN AND PERSONS ENGAGED IN COMBINATION FLAT STEREO AND COMPOSING ROOM WORK ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

14056-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. GODERICH TUBE & STEEL COMPANY (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (30 EMPLOYEES IN THE UNIT).

14057-67-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 269 (APPLICANT) v. FOLEY SUPPLY & MACHINE CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

14074-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. MONARCH PLASTERING (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14075-67-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) v. BENDAH ELECTRIC CONTRACTOR (RESPONDENT).

UNIT: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

13728-67-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) v. ELECTROHOME LIMITED (RESPONDENT) v. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #1) AMALGAMATED WORKERS UNION (INTERVENER #2).

- AND -

13737-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) v. ELECTROHOME LIMITED (RESPONDENT) v. AMALGAMATED WORKERS UNION (INTERVENER).

(THE ABOVE APPLICATIONS ARE CONSOLIDATED).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, CHIEF ENGINEER, PERSONS ABOVE THE RANKS OF FOREMAN AND CHIEF ENGINEER, SECURITY GUARDS, OFFICE STAFF, SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CO-OPERATIVE PLANT UNIVERSITY STUDENTS, AND ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT KITCHENER." (1136 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		1131
NUMBER OF PERSONS WHO CAST BALLOTS	1126	
BALLOTS SEGREGATED AND NOT COUNTED	5	
NUMBER OF SPOILED BALLOTS	20	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC)	601	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #2 AMALGAMATED WORKERS UNION	500	

UNIT #2: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE BOILER ROOM OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC)	0	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT CANADIAN UNION OF OPERATING ENGINEERS	4	

13746-67-R: GENERAL WORKERS' LOCAL 800, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. STEDMANS DIVISION OF MACLEOD STEDMAN LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT SECTION MANAGERS AND PERSONS ABOVE THE RANK OF SECTION MANAGER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	5	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0	

13842-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. GENERAL SPRING PRODUCTS LIMITED (RESPONDENT) V. GENERAL SPRING PRODUCTS UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PLANT GUARDS, NURSES, OFFICE, CLERICAL, TECHNICAL AND SALES STAFF." (1079 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		960
NUMBER OF PERSONS WHO CAST BALLOTS	954	
BALLOTS SEGREGATED AND NOT COUNTED	7	
NUMBER OF SPOILED BALLOTS	9	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	584	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	354	

(SEE INDEXED ENDORSEMENT PAGE 967).

13905-67-R: BREWERY WORKERS LOCAL UNION No. 325, ETOBICOKE VICINITY, ONTARIO, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. THE CARLING BREWERIES LIMITED (RESPONDENT) V. BREWERY WORKERS LOCAL UNION No. 304, TORONTO, ONTARIO, AND THE INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ETOBICOKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, GUARDS AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 AND THE RESPONDENT." (209 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		194
NUMBER OF PERSONS WHO CAST BALLOTS	192	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	148	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	44	

13943-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT)
V. CAMPBELL MANUFACTURING COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL
WOODWORKERS OF AMERICA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE
AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND
SALES STAFF." (86 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		77
NUMBER OF PERSONS WHO CAST BALLOTS	77	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	63	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	14	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

13649-67-R: KINGSTON INDEPENDENT NYLON WORKERS UNION (APPLICANT)
V. DU PONT OF CANADA LIMITED (RESPONDENT) V. TEXTILE WORKERS' UNION
OF AMERICA, CLC. AFL-CIO (INTERVENER) V. DISTRICT 50, UNITED MINE
WORKERS OF AMERICA, LOCAL 13160 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS NYLON MANUFACTURING
PLANT IN THE TOWNSHIP OF KINGSTON, COUNTY OF FRONTENAC, KNOWN AS ITS
KINGSTON WORKS, WHO ARE PAID AT AN HOURLY RATE, SAVE AND EXCEPT
OFFICE STAFF, GUARDS, FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN,
AND STUDENTS EMPLOYED FOR THE SUMMER VACATION PERIOD." (1750
EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		1612
NUMBER OF PERSONS WHO CAST BALLOTS	1471	
NUMBER OF SPOILED BALLOTS	17	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	979	
NUMBER OF BALLOTS MARKED IN FAVOUR OF DISTRICT 50, UNITED MINE WORKERS OF AMERICA, LOCAL 13160	475	

13807-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL-CIO:CLC
(APPLICANT) V. CENTRAL SUPERMARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT
SARNIA, SAVE AND EXCEPT STORE MANAGER, MEAT MANAGER, GROCERY MANAGER,
PRODUCE MANAGER, BAKERY MANAGER, AND PERSONS COVERED BY THE SUBSIST-
ING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT."
(56 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		48
NUMBER OF PERSONS WHO CAST BALLOTS	47	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	45	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	2	

13960-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.
CORPORATION OF THE COUNTY OF HASTINGS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT HASTINGS MANOR
HOME FOR THE AGED, SAVE AND EXCEPT THE SUPERINTENDENT OF THE HOME,
MATRON, CHIEF ENGINEER, CHIEF COOK, REGISTERED NURSES, OFFICE STAFF,
AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."
(67 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		59
NUMBER OF PERSONS WHO CAST BALLOTS	59	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	35	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	24	

13980-67-R: NATIONAL PRESSED GLASS EMPLOYEES' ASSOCIATION (APPLICANT)
V. NATIONAL PRESSED GLASS LIMITED (RESPONDENT) V. UNITED GLASS &
CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		12
NUMBER OF PERSONS WHO CAST BALLOTS	12	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	8	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	4	

14004-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL UNION # 1071 (APPLICANT) V. E. S. MARTIN CONSTRUCTION LIMITED
(RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

NO VOTE CONDUCTED

13391-67-R: TORONTO PRINTING PRESSMEN AND ASSISTANTS' UNION LOCAL NO. 10 (APPLICANT) V. PHOTO ENGRAVERS & ELECTROTYPERS LIMITED (RESPONDENT). V. GROUP OF EMPLOYEES (OBJECTORS). (12 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 951).

13658-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION NO. 1036 (APPLICANT) V. ALM EXCAVATING LIMITED (RESPONDENT). (20 EMPLOYEES).

13721-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. IMPERIAL OPTICAL COMPANY LIMITED (RESPONDENT). (102 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 959).

13765-67-R: NURSES' ASSOCIATION THE HAMILTON AND DISTRICT SCHOOL OF NURSING (APPLICANT) V. THE HAMILTON AND DISTRICT SCHOOL OF NURSING (RESPONDENT). (16 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 960).

13774-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. VARAMAE CONSTRUCTION LIMITED (RESPONDENT). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 961).

13957-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. RON ENGINEERING AND CONSTRUCTION LIMITED (RESPONDENT). (25 EMPLOYEES).

13964-67-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.)
(APPLICANT) V. VERSAFOOD SERVICES LIMITED INSTITUTIONS DIVISION
UNIVERSITY OF GUELPH (RESPONDENT). (161 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 988).

14003-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. COBOURG CONSTRUCTION COMPANY LIMITED (RESPONDENT).
(10 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 992).

14007-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.
VERSAFOOD SERVICES LIMITED, INSTITUTIONS DIVISION (RESPONDENT).

14009-67-R: COMMUNICATIONS WORKERS OF AMERICA, AFL.CIO& CLC
(APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V.
NORTHERN ELECTRIC EMPLOYEES ASSOCIATION (INTERVENER #1) V. UNITED
STEELWORKERS OF AMERICA (INTERVENER #2). (43 EMPLOYEES).

14061-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 2486 (APPLICANT) V. STEDS LIMITED (RESPONDENT). (5 EMPLOYEES).

14073-67-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL
ASSOCIATION OF THE UNITED STATES AND CANADA - LOCAL 159 (APPLICANT)
V. THE JOHN HAYMAN & SONS COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13522-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. BRAY CONSTRUCTION Co. LIMITED (RESPONDENT) V. GROUP
OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE
RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEW-
MARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF
THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE
STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CON-
CESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE
WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING
NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF
CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE
PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE
AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-
WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		7
NUMBER OF PERSONS WHO CAST BALLOTS	7	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	

13536-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA LOCAL 905 (APPLICANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		23
NUMBER OF PERSONS WHO CAST BALLOTS	23	
BALLOTS SEGREGATED AND NOT COUNTED	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	11	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	11	

13645-67-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. TORONTO AUTO PARKS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	8	

13892-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CITY OF OTTAWA PUBLIC SCHOOL BOARD (RESPONDENT) V. THE OTTAWA PUBLIC SCHOOL BOARD MAINTENANCE STAFF ASSOCIATION (INTERVENER).

UNIT: "ALL MAINTENANCE STAFF, BUS DRIVERS AND MECHANICS IN THE EMPLOY OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (95 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	93
NUMBER OF PERSONS WHO CAST BALLOTS	93
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	25
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	67

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

14017-67-R: NURSES' ASSOCIATION MIDDLESEX COUNTY HEALTH UNIT (APPLICANT) V. MIDDLESEX COUNTY HEALTH UNIT (RESPONDENT). (10 EMPLOYEES).

14019-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. NORMAND FARQUHARSON LIMITED (RESPONDENT). (3 EMPLOYEES).

14034-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 793 (APPLICANT) V. CARLING CONSTRUCTION (LONDON) LTD. (RESPONDENT). (3 EMPLOYEES).

14058-67-R: STILLMEADOW FARMS EMPLOYEES ASSOCIATION (APPLICANT) V. STILLMEADOW FARMS LIMITED (RESPONDENT). (72 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED

OF DURING JANUARY

13709-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. SPRING PLASTERING LIMITED (INTERVENER). (5 EMPLOYEES). (GRANTED)

(SEE INDEXED ENDORSEMENT PAGE 997).

13894-67-R: AUGUST EQUIPMENT LIMITED (APPLICANT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 141, OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF AUGUST EQUIPMENT LIMITED AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN AUGUST EQUIPMENT LIMITED AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	2

13925-67-R: 1. SINCLAIR C. O'DELL AND 2. ROBERT F. FOSTER, REPRESENTING A GROUP OF EMPLOYEES (APPLICANTS) V. UNITED BRICK & CLAY WORKERS OF AMERICA, AFL - CIO - CLC AND ITS COOKSVILLE LOCAL No. 668 (RESPONDENT) V. DOMTAR CONSTRUCTION MATERIALS LTD., CLAY PRODUCTS DIVISION, COOKSVILLE PLANTS, COOKSVILLE, ONT. (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS CLAY PRODUCTS PLANTS NO. 15 AND NO. 16 AT THE TOWNSHIP OF TORONTO, SAVE AND EXCEPT -
 (A) MANAGERIAL, SALES, ENGINEERING, LABORATORY AND OFFICE STAFF;
 (B) SUPERVISORY EMPLOYEES ABOVE AND INCLUDING THE RANK OF FOREMAN;
 (C) (I) WORKERS ENGAGED IN NEW CONSTRUCTION WORK INVOLVING INCREASED AND/OR IMPROVED FACILITIES;
 (II) WORKERS ENGAGED IN ANY WORK ON THE COMPANY'S PREMISES, WHO ARE NOT ON THE COMPANY PAYROLL;
 (D) ALL PART TIME AND TEMPORARY EMPLOYEES, AND EMPLOYEES WHO HAVE NOT COMPLETED A PROBATIONARY PERIOD OF THIRTY (30) DAYS WORKED;
 (E) WATCHMEN." (203 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	203
NUMBER OF PERSONS WHO CAST BALLOTS	201
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	10
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	191

13975-67-R: MICHAEL DEPROSPO (APPLICANT) V. INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL, CIO, CLC (RESPONDENT). (ACME POLYGON SERVICES LTD.). (26 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1005).

14023-67-R: LYNDA KERTON (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL CIO CLC (RESPONDENT) V. NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS (INTERVENER). (10 EMPLOYEES).

14024-67-R: MARGARET PATRICIA MOSSMAN (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION A.F.L. C.I.O. C.L.C. (RESPONDENT) V. NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS (INTERVENER). (DISMISSED).

14025-67-R: THELMA ERB (APPLICANT) V. RETAIL WHOLESALE AND DEPT STORE UNION AFL CIO CLC (RESPONDENT) V. NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS (INTERVENER). (DISMISSED).

14027-67-R: NELLA GAUDIO (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION A.F.L. C.I.O. C.L.C. (RESPONDENT) V. NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS (INTERVENER). (DISMISSED).

14028-67-R: LOGAN MARSHALL (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION A.F.L. C.I.O. C.L.C. (RESPONDENT) V. NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS (INTERVENER). (DISMISSED).

14029-67-R: JEANETTE COULES (APPLICANT) V. RETAIL WHOLESALE & DEPT STORE UNION OF A.F.L.: C.I.O.: C.L.C. (RESPONDENT) V. NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS (INTERVENER). (DISMISSED).

14050-67-R: R. H. TACKMAN (APPLICANT) V. RETAIL, WHOLESALE DEPARTMENT STORE UNION A.F.L. C.I.O. C.L.C. (RESPONDENT). (1 EMPLOYEE). (DISMISSED).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

JANUARY

13971-67-R: TEAMSTERS LOCAL UNION No. 647, MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647 (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT) V. NATIONAL VENDING UNION ASSOCIATION (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JANUARY

13727-67-U: RANEY, BRADY & MCCLOY LIMITED (APPLICANT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL UNION No. 793 (RESPONDENT). (WITHDRAWN).

13872-67-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CITY PARKING CANADA LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1010).

13886-67-U: CITY PARKING CANADA LIMITED (APPLICANT) V. WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1015).

13908-67-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. WELPORT INVESTMENTS LTD. (RESPONDENT). (WITHDRAWN).

13954-67-U: AUBIN PLUMBING & HEATING LIMITED (APPLICANT) V. MARCEL ROUSSEAU, WILLIAM MALLETTE, AURELE MALLETTE, EMILE GOUDREAU, TOM PETRYNA, JOSEPH GASCON, NORM BOULARD, WAYNE MITCHELL, AURELE LALANDE, GERRY MORIN AND ROGER LALONDE (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 1019).

APPLICATION FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT)

DISPOSED OF DURING JANUARY

2-67-PH: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U. (APPLICANT) V. CENTRE GREY GENERAL HOSPITAL (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1020).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING JANUARY

13561-67-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. HI WAY MARKET LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1021).

13723-67-U: INTERNATIONAL LADIES GARMENT WORKERS UNION (COMPLAINANT) V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1026).

13844-67-U: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, CLC. (COMPLAINANT) V. THIESS MACHINERY COMPANY LIMITED (RESPONDENT). (GRANTED).

- AND -

13917-67-U: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION C.L.C. (COMPLAINANT) V. THIESS MACHINERY COMPANY LIMITED (RESPONDENT). (GRANTED).

(THE ABOVE APPLICATIONS ARE CONSOLIDATED).

13846-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. JAVVIN TRUCK BODIES LTD. (RESPONDENT). (DISMISSED).

- AND -

13847-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. JAUVIN TRUCK BODIES LTD. (RESPONDENT). (DISMISSED).

- AND -

13848-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. JAUVIN TRUCK BODIES LTD. (RESPONDENT). (DISMISSED).

13849-67-U: INTERNATIONAL UNION, ^{AND} UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. JAUVIN TRUCK BODIES LTD. (RESPONDENT). (DISMISSED).

(THE ABOVE APPLICATIONS ARE CONSOLIDATED).

(SEE INDEXED ENDORSEMENT PAGE 1031).

13862-67-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. CITY PARKING CANADA LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1038).

13871-67-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. E-ZEE PARKING LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1041).

13895-67-U: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. STANDARD CHEMICAL LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1045).

13963-67-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. DOMINION SASH LIMITED (RESPONDENT). (WITHDRAWN).

13986-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. JOHN INGLIS COMPANY LTD. (RESPONDENT). (WITHDRAWN).

13987-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. THERMOTEX WINDOWS OF CANADA (RESPONDENT). (WITHDRAWN).

13998-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT).

- AND -

13939-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1046).

14060-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V.
BENARNAL COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY TRADE
MEMBER) DISPOSED OF DURING JANUARY

13904-67-M: IMRE GARDOS (COMPLAINANT) V. CANADIAN UNION OF PUBLIC
EMPLOYEES LOCAL 929 (RESPONDENT). (DISMISSED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING
JANUARY

13909-67-M: CORPORATION OF THE TOWN OF HAWKESBURY (APPLICANT) V.
CANADIAN UNION OF PUBLIC EMPLOYEES - LOCAL 1026 (RESPONDENT).
(GRANTED).

13962-67-M: LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO.
506 (APPLICANT) V. ARTEX PRECAST LIMITED (RESPONDENT). (WITHDRAWN).

JURISDICTIONAL DISPUTES

13599(A)-67-JD: REDFERN CONSTRUCTION COMPANY LIMITED (COMPLAINANT)
V. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION 793
AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
(RESPONDENTS). (WITHDRAWN).

(SEE INDEXED ENDORSEMENT PAGE 1050).

13952(A)-67-JD: BENNETT & WRIGHT LIMITED (COMPLAINANT) V. THE UNITED
ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING
INDUSTRY OF THE UNITED STATES & CANADA (RESPONDENT #1), AND THE UNITED
ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING
INDUSTRY OF THE UNITED STATES & CANADA, LOCAL 67 (RESPONDENT #2), AND
R. WATSON, OF THE MUNICIPALITY OF RICHMOND HILL, IN THE PROVINCE OF
ONTARIO, GENERAL ORGANIZER FOR THE UNITED ASSOCIATION OF JOURNEYMEN &
APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED
STATES & CANADA (RESPONDENT #3), AND T. BYRNE, OF THE CITY OF HAMILTON
IN THE PROVINCE OF ONTARIO, BUSINESS MANAGER OF LOCAL 67 OF THE UNITED
ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING
INDUSTRY OF THE UNITED STATES & CANADA (RESPONDENT #4), AND P. DERY,
OF THE MUNICIPALITY OF STONEY CREEK IN THE PROVINCE OF ONTARIO, UNION
STEWARD OF LOCAL 67 OF THE UNITED ASSOCIATION OF JOURNEYMEN & APPREN-
TICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES &
CANADA REPRESENTING EMPLOYEES OF A.E. ANDERSON CONSTRUCTION COMPANY
LIMITED (RESPONDENT #5), AND INTERNATIONAL MOLDERS AND ALLIED WORKERS
UNION, AFL-CIO-CLC (RESPONDENT #6), AND A.E. ANDERSON CONSTRUCTION
COMPANY LIMITED (RESPONDENT #7), AND DOMINION FOUNDRIES AND STEEL

LIMITED (RESPONDENT #8), AND INTERNATIONAL ASSOCIATION OF MACHINISTS (INTERVENER). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1051).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

13563-67-R: MRS. BEATRICE LEVERE (APPLICANT) V. THE HOTELS CLUBS RESTAURANTS, TAVERNS, EMPLOYEE UNION LOCAL 261 (RESPONDENT) (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1059).

13709-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. SPRING PLASTERING LIMITED (INTERVENER).

(SEE INDEXED ENDORSEMENT PAGE 1060).

13786-67-R: CANADIAN TEXTILE COUNCIL (APPLICANT) V. THE WATSON MANUFACTURING COMPANY OF PARIS LIMITED (RESPONDENT) V. TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (INTERVENER). (REQUEST DENIED).

13876-67-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. ST. MARY'S OF THE LAKE HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1058).

13941-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. KELSEY-HAYES CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1058).

INDEXED ENDORSEMENTS - CERTIFICATION

13391-67-R: TORONTO PRINTING PRESSMEN AND ASSISTANTS' UNION LOCAL No. 10 (APPLICANT) V. PHOTO ENGRAVERS & ELECTROTYPERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.F.W. WEATHERILL, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND O. HODGES.

DECISION OF THE BOARD:

JANUARY 18, 1968.

1. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES MADE FOLLOWING THE REPORT OF THE EXAMINER DATED DECEMBER 19TH, 1967.
2. THESE REPRESENTATIONS DO NOT CONSTITUTE OBJECTIONS OR REPRESENTATIONS WITH RESPECT TO THE REPORT ITSELF BUT RATHER GO TO THE REQUEST OF THE APPLICANT FOR RECONSIDERATION OF THE BOARD'S DETERMINATION OF THE UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING WHICH WAS DEFINED IN THE BOARD'S ENDORSEMENT OF THE RECORD IN THIS MATTER DATED NOVEMBER 2ND, 1967.
3. THE APPLICANT IN REQUESTING REVIEW OF THAT DETERMINATION HAS REFERRED TO A NUMBER OF MATTERS WHICH WOULD HAVE BEEN RELEVANT TO THE ISSUE OF THE APPROPRIATE BARGAINING UNIT. ALTHOUGH IT WAS OPEN TO IT TO DO SO THE APPLICANT DID NOT REFER TO ANY OF THESE MATTERS AT THE HEARING BEFORE THE BOARD NOR IS THERE ANY REFERENCE THERETO IN THE REPORT OF THE EXAMINER DATED OCTOBER 18TH, 1967 OR IN THE REPORT OF THE EXAMINER DATED DECEMBER 19TH, 1967.
4. IT IS CLEAR THAT THE APPLICANT HAD AMPLE OPPORTUNITY ON A NUMBER OF OCCASIONS TO BRING THESE MATTERS TO THE ATTENTION OF THE BOARD. IN ACCORDANCE WITH OUR USUAL PRACTICE IN SUCH CIRCUMSTANCES WE DO NOT DEEM IT ADVISABLE TO REVIEW OUR DECISION IN THIS MATTER.
5. ON THE EVIDENCE BEFORE THE BOARD LESS THAN FORTY-FIVE PER CENT OF THE PERSONS IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT ON JULY 26TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
6. THE APPLICATION IS DISMISSED.

13456-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. KING OPTICAL COMPANY (RESPONDENT) V. CANADIAN OPTICAL WORKERS' UNION 202 - N.C.C.L. (INTERVENER).

BEFORE: J.F.W. WEATHERILL, VICE-CHAIRMAN AND BOARD MEMBERS
J.E.C. ROBINSON AND O. HODGES.

DECISION OF THE BOARD: JANUARY 24, 1968.

1. ON SEPTEMBER 1ST, 1967, THE SOLICITOR FOR THE INTERVENER, CANADIAN OPTICAL WORKERS UNION MADE CERTAIN ALLEGATIONS OF UNFAIR PRACTICES AGAINST THE APPLICANT, INTERNATIONAL UNION OF DOLL & TOY WORKERS. THESE CHARGES WERE RECEIVED BY THE BOARD ON SEPTEMBER 5TH, 1967 AND FORWARDED THAT DAY TO THE OTHER PARTIES. AT THE HEARING OF THIS MATTER ON SEPTEMBER 11TH, 1967, COUNSEL FOR THE APPLICANT RAISED

THE OBJECTION THAT THESE ALLEGATIONS WERE UNTIMELY AND IN HIS OBJECTION COUNSEL RELIED UPON THE FLECK MANUFACTURING LIMITED CASE, 62 CLLC 1046 AND UPON SECTION 47 OF THE BOARD'S RULES OF PROCEDURE.

2. THIS APPLICATION WAS MADE ON JULY 31ST, 1967. THE FIRST HEARING IN THIS MATTER WAS HELD ON AUGUST 14TH, 1967. THE CONTINUED HEARING HELD ON SEPTEMBER 11TH, 1967, WAS HELD ON THE ISSUES OF AN ALLEGED NON-PAYMENT OF INITIATION FEE BY JOHN MCNANEY IN CONNECTION WITH THE APPLICATION FOR MEMBERSHIP IN THE CANADIAN OPTICAL WORKERS UNION AND ON THE ISSUE OF CERTAIN ALLEGATIONS MADE BY THE INTERNATIONAL UNION OF DOLL & TOY WORKERS. THE ISSUES RAISED BY THE INTERVENER IN ITS ALLEGATIONS CONCERNED MATTERS WHICH OCCURRED ON OR NEAR THE DATE OF THIS APPLICATION AND IN ANY EVENT PRIOR TO THE TERMINAL DATE. THE PERSONS REFERRED TO IN THE ALLEGATIONS INCLUDE PERSONS WHO ATTENDED AT THE FIRST HEARING OF THIS MATTER AND ARE LISTED AS APPEARING FOR THE INTERVENER AT THE HEARING. THERE WOULD SEEM TO BE LITTLE DOUBT THAT THESE MATTERS WERE KNOWN TO THE INTERVENER PRIOR TO THE FIRST HEARING OF THIS MATTER OR THAT THEY COULD HAVE BEEN DISCOVERED BY IT WITH REASONABLE DILIGENCE. COUNSEL FOR THE INTERVENER WHO HAD BEEN RETAINED SHORTLY BEFORE THE SECOND HEARING OFFERED NO EXPLANATION FOR THE INTERVENER'S DELAY IN MAKING ITS ALLEGATIONS.

3. IN THE FLECK MANUFACTURING LIMITED CASE, 62 C.L.L.C. 1046, THE BOARD STATED:

IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION SECTION 48 OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE.

THE MATERIAL PROVISIONS OF THE RULES THERE REFERRED TO ARE NOW CONTAINED IN SECTION 47(1) AND (2) OF THE BOARD'S RULES OF PROCEDURE. THESE PROVISIONS ARE AS FOLLOWS:

.47.-(1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL,

- (A) INCLUDE IN THE APPLICATION OR COMPLAINT;
OR
- (B) FILE A NOTICE OF INTENTION THAT SHALL
CONTAIN,

A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED, AND, WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTES A VIOLATION OF ANY PROVISIONS OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISION.

- (2) WHERE, IN THE OPINION OF THE BOARD, A PERSON HAS NOT FILED NOTICE OF INTENTION PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER OR IRREGULAR CONDUCT, HE SHALL NOT ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS, EXCEPT WITH THE CONSENT OF THE BOARD AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE.

4. IN OUR VIEW IT IS OF GREAT IMPORTANCE IN MATTERS SUCH AS THIS THAT THE PARTIES EXERCISE DILIGENCE IN THE INVESTIGATION OF IMPROPRIETIES AND IN BRINGING THESE TO THE BOARD'S ATTENTION PROMPTLY ONCE THEY ARE DISCOVERED. HAVING REGARD TO THE UNTIMELY NATURE OF THE INTERVENER'S ALLEGATIONS AND TO THE ABSENCE OF SATISFACTORY EXPLANATION FOR THEIR LATENESS, IT IS OUR RULING THAT THE INTERVENER'S ALLEGATIONS WILL NOT BE ENTERTAINED.

13492-67-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT, AND GENERAL WORKERS (APPLICANT) V. R. E. LAW CRUSHED STONE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
P. J. O'KEEFFE AND J. E. C. ROBINSON.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER
J. E. C. ROBINSON: JANUARY 4, 1968.

1. BY LETTER DATED DECEMBER 21ST, 1967, THE REPRESENTATIVE OF THE APPLICANT IN THIS MATTER REQUESTED THAT THE BOARD RECONSIDER ITS DECISION OF DECEMBER 13TH, 1967 ON THE GROUNDS THAT, BY REFUSING TO ENTERTAIN THE CHALLENGES MADE BY THE APPLICANT TO THOSE PERSONS ON THE VOTERS' LIST CLASSIFIED AS LEAD HANDS, THE BOARD HAS DENIED "NATURAL JUSTICE" TO THE APPLICANT. THE REPRESENTATIVE OF THE APPLICANT IN HIS LETTER OF DECEMBER 21ST, 1967, ALSO ALLEGES THAT THERE WERE IRREGULARITIES DURING THE CAMPAIGN PRIOR TO THE TAKING OF THE REPRESENTATION VOTE ON DECEMBER 14TH, INCLUDING INFRACTIONS OF THE "SILENT PERIOD" IMMEDIATELY PRECEDING THE VOTE. THE BOARD PROPOSES TO DEAL FIRST WITH THE SUBMISSION THAT THERE HAS BEEN A DENIAL OF "NATURAL JUSTICE" TO THE APPLICANT.

2. THE REPRESENTATIVE OF THE APPLICANT IN HIS LETTER OF DECEMBER 21ST TAKES EXCEPTION TO ALLEGED "ERRONEOUS STATEMENTS" MADE BY THE BOARD IN PARAGRAPHS 3, 4, 5, AND 6 IN ITS DECISION OF DECEMBER 13TH, 1967. THE APPLICANT, HOWEVER, FAILS TO INDICATE WHICH "STATEMENTS" IT CONSIDERS TO BE "ERRONEOUS". THE BOARD, ACCORDINGLY, IS NOT IN A POSITION TO DEAL WITH THE GENERAL ALLEGATIONS OF THE RESPONDENT. WE WOULD ONLY SAY THAT, BASED ON THE EVIDENCE BEFORE US, WE ARE UNAWARE AND HAVE NO REASON TO BELIEVE THAT ANY OF THE STATEMENTS OF FACT SET OUT IN THE PARAGRAPHS CITED BY THE APPLICANT ARE IN ANY WAY "ERRONEOUS".

3. THE REPRESENTATIVE OF THE APPLICANT IN HIS LETTER OF DECEMBER 21ST DOES ALLEGE THAT IN PARAGRAPH 4 OF THE BOARD'S DECISION OF DECEMBER 13TH, THE BOARD DREW AN UNWARRANTED INFERENCE FROM A REPRESENTATION CONTAINED IN THE REPRESENTATIVE OF THE APPLICANT'S LETTER TO THE BOARD DATED NOVEMBER 30TH, 1967, A COPY OF WHICH IS ATTACHED TO HIS LETTER OF DECEMBER 21ST. THE REPRESENTATION IN QUESTION READS AS FOLLOWS: "WE ARE NOT RESTING CHALLENGES ON THE BASIS THAT THE SO-CALLED LEAD HANDS ARE FOREMEN, BUT ON OUR BELIEF THAT THEY, OR SOME OF THEM, EXERCISE CERTAIN MANAGEMENT FUNCTIONS." HAVING REGARD TO THIS REPRESENTATION AND THE FACT THAT THE APPLICANT CHALLENGED THE STATUS OF ALL OF THE PERSONS ON THE VOTERS' LIST CLASSIFIED AS LEAD HANDS, ALL OF WHOM WERE SO CLASSIFIED ON THE ORIGINAL LIST FILED BY THE RESPONDENT, THE BOARD CONCLUDED THAT THE APPLICANT WAS NOW SUBMITTING THAT THE LEAD HANDS AS A CLASSIFICATION SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. IN OUR VIEW, THIS IS THE ONLY REASONABLE INFERENCE THE BOARD COULD DRAW IN THE CIRCUMSTANCES.

4. THE OTHER MATTERS RAISED BY THE REPRESENTATIVE OF THE APPLICANT IN HIS LETTER OF DECEMBER 21ST WITH RESPECT TO THE ORIGINAL LIST FILED BY THE RESPONDENT, THE VOTERS' LIST AND THE STATUS OF PERSONS CLASSIFIED AS LEAD HANDS HAVE BEEN DEALT WITH BY THE BOARD IN ITS DECISIONS OF NOVEMBER 15TH AND DECEMBER 13TH, 1967. WE WOULD, HOWEVER, MAKE REFERENCE TO A NUMBER OF PREVIOUS LETTERS FROM THE REPRESENTATIVE OF THE APPLICANT, COPIES OF WHICH HE ATTACHED TO HIS LETTER OF DECEMBER 21ST, 1967.

5. THE LETTERS OF THE REPRESENTATIVE OF THE APPLICANT DATED AUGUST 24TH AND AUGUST 25TH, 1967 WERE RETURNED TO THE REPRESENTATIVE OF THE APPLICANT BY THE REGISTRAR UPON INSTRUCTIONS OF THE BOARD, OVER A COVERING LETTER DATED AUGUST 31ST, 1967. THE APPLICANT WAS ADVISED BY THE REGISTRAR THAT AT THE BOARD HEARING ON AUGUST 24TH THE PARTIES TO THE PROCEEDING WERE GIVEN A FULL OPPORTUNITY TO MAKE THEIR REPRESENTATIONS ON ALL MATTERS RELEVANT TO THE APPLICATION AND THAT THE BOARD SAW NO REASON TO ENTERTAIN FURTHER SUBMISSIONS AT THAT TIME. THE OTHER PARTIES TO THE PROCEEDING WERE NOT PROVIDED WITH COPIES OF THE APPLICANT'S LETTERS OF AUGUST 24TH AND 25TH, AND THEY DO NOT FORM A PART OF THE BOARD'S RECORD. ACCORDINGLY, THE BOARD DOES NOT INTEND TO DEAL FURTHER WITH THOSE LETTERS OTHER THAN TO EMPHASIZE THAT THERE IS NOTHING IN THEIR CONTENT WHICH WAS NOT RAISED OR COULD NOT HAVE BEEN RAISED BY THE REPRESENTATIVE OF THE APPLICANT AT THE BOARD HEARING.

6. THE REPRESENTATIVE OF THE APPLICANT IN HIS LETTER OF SEPTEMBER 27TH PROTESTS THE DISCONTINUANCE OF THE EXAMINATION WHICH HAD BEEN EMBARKED UPON BY AN EXAMINER OF THE BOARD INTO THE DUTIES AND RESPONSIBILITIES OF CERTAIN PERSONS CLASSIFIED AS LEAD HANDS ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. WE WOULD POINT OUT THAT THE PURPOSE OF APPOINTING THE EXAMINER AT THAT STAGE WAS TO INQUIRE INTO THE LIST FILED BY THE RESPONDENT SO THAT THE BOARD COULD ASCERTAIN WITH CERTAINTY WHETHER THE PETITIONS FILED IN OPPOSITION TO THE APPLICATION WERE RELEVANT. THE SCOPE OF THE EXAMINER'S AUTHORITY AS SET OUT IN THE BOARD'S DECISION OF AUGUST 31ST, 1967 WAS TO INQUIRE INTO AND REPORT ON THE LIST FILED BY THE RESPONDENT. THE EXAMINER WAS NOT VESTED WITH AUTHORITY TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF ANY OF THE PERSONS WHOSE NAMES APPEARED ON THE LIST FILED BY THE RESPONDENT. ACCORDINGLY, WHEN THE BOARD BECAME AWARE THAT THE EXAMINER INADVERTENTLY HAD PROCEEDED WITH SUCH AN INQUIRY, THE BOARD DIRECTED THAT HE DISCONTINUE SO DOING SINCE HE WAS EXCEEDING THE SCOPE OF THE AUTHORITY GRANTED TO HIM BY THE BOARD. THE BOARD SUBSEQUENTLY FOUND IN ITS DECISION OF NOVEMBER 15TH, 1967 THAT THE APPLICANT HAD NOT ESTABLISHED ITS ENTITLEMENT TO AN INQUIRY INTO THE DUTIES AND RESPONSIBILITIES OF THE LEAD HANDS CHALLENGED BY THE APPLICANT AT THE CONCLUSION OF THE BOARD HEARING ON AUGUST 24TH,

7. IN HIS LETTER OF NOVEMBER 21ST, 1967 THE REPRESENTATIVE OF THE APPLICANT STATES THAT HE INFORMED THE BOARD AT THE HEARING ON AUGUST 24TH THAT HE HAD BEEN ON VACATION UNTIL A DAY OR SO BEFORE THE DATE OF THE HEARING. THE REPRESENTATIVE OF THE APPLICANT IN THE SAME LETTER STATES THAT AT THE HEARING HE AGREED TO "THE DEFINITION SUGGESTED BY THE BOARD" WITH THE STIPULATION THAT THIS AGREEMENT WAS SUBJECT TO DETERMINING THE VALIDITY OF THE LIST SUBMITTED BY THE RESPONDENT. THE BOARD DID NOT SUGGEST THE LINE OF MANAGEMENT WHICH SHOULD BE EXCLUDED FROM THE BARGAINING UNIT. RATHER, THE PARTIES AGREED THAT "FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN" SHOULD BE EXCLUDED FROM THE BARGAINING UNIT AND THAT LEAD HANDS WERE INCLUDED IN THE BARGAINING UNIT. WE HAVE NO RECORD OF THE REPRESENTATIVE OF THE APPLICANT ATTACHING ANY STIPULATIONS OR QUALIFICATIONS TO THIS AGREEMENT. NEITHER DO WE HAVE ANY RECORD OF THE REPRESENTATIVE OF THE APPLICANT ADVISING THE BOARD THAT HE HAD JUST RETURNED

FROM VACATION IMMEDIATELY PRIOR TO THE BOARD HEARING.

8. HAVING REGARD TO ALL OF THE ABOVE CONSIDERATIONS AND THE EARLIER DECISIONS OF THE BOARD IN THIS MATTER, THE APPLICANT HAS FAILED TO SATISFY US THAT THERE HAD BEEN ANY DENIAL OF "NATURAL JUSTICE" BY REFUSING TO APPOINT AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THOSE PERSONS CLASSIFIED AS LEAD HANDS ON THE VOTERS' LIST IN THE CIRCUMSTANCES IN WHICH THE CHALLENGES WERE MADE. WE WOULD ADD THAT THERE ARE NO PERSONS SHOWN ON THE VOTERS' LIST CLASSIFIED AS FOREMEN OR AS PERSONS ABOVE THE RANK OF FOREMAN. SPECIFICALLY, NO PERSONS CLASSIFIED AS EITHER DISPATCHER OR ROAD SUPERINTENDENT ARE SHOWN ON THE VOTERS' LIST.

9. ON PAGES 4 AND 5 OF THE LETTER OF THE REPRESENTATIVE OF THE APPLICANT DATED ~~DECEMBER 21ST~~, 1967 THE APPLICANT ALLEGES CERTAIN CONDUCT, PARTICULARLY ON THE PART OF H. J. BEACH, AN EMPLOYEE OF THE RESPONDENT, WHICH THE APPLICANT SUBMITS SO AFFECTED THE REPRESENTATION VOTE THAT THE RESULT OF THE VOTE CANNOT BE ACCEPTED AS REFLECTING THE TRUE WISHES OF THE EMPLOYEES WHO CAST BALLOTS. THE APPLICANT FURTHER ALLEGES THAT THERE HAS BEEN A VIOLATION OF THE REGISTRAR'S DIRECTION THAT ALL INTERESTED PARTIES ARE REQUIRED TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FOR 72 HOURS BEFORE THE VOTE IS TAKEN.

10. HAVING REGARD TO THE NATURE OF THE ALLEGATIONS FILED BY THE APPLICANT, THE BOARD DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR A CONTINUATION OF HEARING FOR THE PURPOSE OF ENTERTAINING THE APPLICANT'S CHARGES WITH RESPECT TO THE REPRESENTATION VOTE. THE APPLICANT HAS REQUESTED THAT ANY HEARING BE HELD AT PORT COLBORNE. THE POLICY OF THE BOARD IN THIS TYPE OF PROCEEDING IS TO HOLD ALL HEARINGS IN TORONTO UNLESS THERE ARE SPECIAL CIRCUMSTANCES WHICH WOULD WARRENT THE BOARD SCHEDULING THE HEARING AT SOME OTHER LOCATION. THE APPLICANT DOES NOT ALLEGE ANY SPECIAL CIRCUMSTANCES IN THIS CASE. THE BOARD, ACCORDINGLY, DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR HEARING IN TORONTO.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER P. J. O'KEEFFE:

JANUARY 4, 1968.

THE REQUEST FOR RECONSIDERATION OF THE BOARD'S DECISION OF DECEMBER 13TH IS DIRECTED TOWARD THE DECISION OF THE MAJORITY. ACCORDINGLY, I DO NOT FEEL CALLED UPON TO COMMENT FURTHER EXCEPT TO REFER TO MY MINORITY DECISION OF THE SAME DATE, IN WHICH I TOOK THE POSITION THAT THERE WAS A DENIAL OF NATURAL JUSTICE IN THE DECISION OF THE MAJORITY WHEREIN THEY DENIED THE APPLICANT UNION'S REQUEST FOR AN INQUIRY INTO ITS ALLEGATION THAT CERTAIN MANAGERIAL PEOPLE WERE INCLUDED IN THE PROPOSED VOTING CONSTITUENCY.

I CONCUR IN THE DECISION OF THE MAJORITY TO DIRECT THE REGISTRAR TO LIST THIS MATTER FOR A CONTINUATION OF HEARING FOR THE PURPOSE OF ENTERTAINING THE APPLICANT'S CHARGES WITH RESPECT TO THE REPRESENTATION VOTE.

13678-67-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CANADA SAND PAPERS LIMITED (RESPONDENT) V. INTERNATIONAL CHEMICAL WORKERS UNION A.F.L.-C.I.O. - C.L.C., ON BEHALF OF ITS LOCAL 652 (INTERVENER).

BEFORE: J.F.W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS
P. J. O'KEEFE AND J.E.C. ROBINSON.

DECISION OF THE BOARD: JANUARY 8, 1968.

1. PURSUANT TO THE BOARD'S DECISION DATED NOVEMBER 28TH, 1967, THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING IN ORDER THAT THE PARTIES MIGHT PRESENT SUCH EVIDENCE AND ARGUMENTS AS THEY SAW FIT HAVING REGARD TO THE MATTERS SET OUT IN THE BOARD'S ENDORSEMENT.

2. AS THE BOARD STATED IN PARAGRAPH 4 OF ITS ENDORSEMENT "IT IS ...INCUMBENT UPON THE INTERVENER ... TO MAKE OUT A CASE IN SUPPORT OF ITS OBJECTIONS. THE APPLICANT WOULD THEN BE ENTITLED TO ADDUCE EVIDENCE IN ANSWER TO THE OBJECTOR'S CASE..." AT THE CONTINUED HEARING IN THIS MATTER, THE INTERVENER, INTERNATIONAL CHEMICAL WORKERS UNION, CALLED NO EVIDENCE WHEN CALLED ON AT THE OUTSET OF THE HEARING. THE APPLICANT WAS THUS NOT FACED WITH ANY CASE TO ANSWER. NEVERTHELESS, THE APPLICANT DID CALL EVIDENCE SEEKING TO ESTABLISH THAT THE INTERVENER HAD NOT ADEQUATELY REPRESENTED THOSE EMPLOYEES IN THE BARGAINING UNIT FOR WHOM IT NOW SEEKS CERTIFICATION. ALTHOUGH SUCH EMPLOYEES MAY HAVE BEEN DISSATISFIED WITH THE INTERVENER AS THEIR REPRESENTATIVE, THERE WAS LITTLE EVIDENCE RELATING TO THE HISTORY OF THE INCUMBENT UNION'S REPRESENTATION OF THEM. IN CROSS-EXAMINATION, THE REPRESENTATIVE OF THE INTERVENER SOUGHT TO ESTABLISH THAT THE MEMBERS OF THE CRAFT GROUPS HAD NOT ASSERTED THEIR CLAIMS AND THUS COULD NOT NOW COMPLAIN WITH RESPECT TO THEM. AS THE BOARD'S EARLIER DECISION, HOWEVER, MADE CLEAR THE ONUS IS ON THE INTERVENER OR OTHER PARTY OBJECTING TO THE APPLICATION TO ESTABLISH THE HISTORY OF ITS REPRESENTATION OF THE CRAFT GROUP. NO SUCH EVIDENCE WAS ADDUCED ON BEHALF OF THE INTERVENER.

3. IN THESE CIRCUMSTANCES, THE BOARD WILL NOT EXERCISE THE DISCRETION GIVEN TO IT UNDER THE PROVISIO OF SECTION 6(2) OF THE LABOUR RELATIONS ACT. IT FOLLOWS THAT THE CRAFT UNIT FOR WHICH CERTIFICATION IS SOUGHT MUST PURSUANT TO SECTION 6(2) OF THE ACT BE DEEMED TO BE APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS REGULARLY EMPLOYED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS STEAM PLANT AT ITS PLANT IN PLATTSVILLE, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 3RD, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

8. THE MATTER IS REFERRED TO THE REGISTRAR.

13721-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) v. IMPERIAL OPTICAL COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: JANUARY 19, 1968.

1. ON OCTOBER 25TH, 1967, THE BOARD AUTHORIZED R. A. WOOLAND, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND IN PARTICULAR ON WHETHER EACH OF THE RESPONDENT'S TEN LOCATIONS IN METROPOLITAN TORONTO CONSTITUTES A SEPARATE BARGAINING UNIT OR WHETHER ALL TEN LOCATIONS COMPRISE ONE APPROPRIATE BARGAINING UNIT.

2. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE INTERIM REPORT OF THE EXAMINER DATED DECEMBER 29TH, 1967, AND THE REPRESENTATIONS WITH RESPECT THERETO CONTAINED IN THE LETTER FROM THE RESPONDENT DATED JANUARY 4TH, 1968, AND THE LETTERS FROM THE APPLICANT DATED JANUARY 8TH AND JANUARY 10TH, 1968, THE BOARD FINDS THAT THE RESPONDENT

OPERATES AN INTEGRATED BUSINESS FROM TEN LOCATIONS IN METROPOLITAN TORONTO. HAVING REGARD TO THE CRITERIA ENUNCIATED BY THE BOARD IN THE USARCO LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 526, AND APPLYING SUCH CRITERIA TO THE FACTS OF THE INSTANT CASE, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS TEN PRESCRIPTION LABORATORIES LOCATED IN METROPOLITAN TORONTO CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. IN VIEW OF THE BOARD'S FINDING, IT IS APPARENT THAT THE BARGAINING UNIT WOULD BE COMPRISED OF SOME ONE HUNDRED EMPLOYEES. SINCE THE APPLICANT IN THIS CASE HAS FILED COMBINATION APPLICATION AND RECEIPT CARDS ON BEHALF OF ONLY SEVENTEEN PERSONS, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 12TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

4. IN VIEW OF THE RESULT IT IS UNNECESSARY FOR THE BOARD TO MADE A DEFINITIVE FINDING WITH RESPECT TO ALL THE EXCLUSIONS FROM THE BARGAINING UNIT SINCE THE APPLICANT WOULD HAVE LESS THAN FORTY-FIVE PER CENT IN ANY BARGAINING UNIT THE BOARD MIGHT DEEM TO BE APPROPRIATE IN THIS CASE. ACCORDINGLY, THE EXAMINER NEED NOT COMPLETE HIS INQUIRY INTO THE DUTIES AND RESPONSIBILITIES OF PERSONS CLASSIFIED BY THE RESPONDENT AS FOREMEN OR THE DUTIES AND RESPONSIBILITIES OF PERSONS CLASSIFIED BY THE RESPONDENT AS CLERKS.

5. THE APPLICATION IS THEREFORE DISMISSED.

13765-67-R: NURSES' ASSOCIATION THE HAMILTON AND DISTRICT SCHOOL OF NURSING (APPLICANT) v. THE HAMILTON AND DISTRICT SCHOOL OF NURSING (RESPONDENT).

BEFORE: J.F.W. WEATHERILL, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

DECISION OF THE BOARD: JANUARY 22, 1968.

1. PURSUANT TO PARAGRAPH 4 OF THE ENDORSEMENT OF THE RECORD IN THIS MATTER DATED NOVEMBER 16TH, 1967, THE APPLICANT REQUESTED A HEARING FOR THE PURPOSE OF MAKING REPRESENTATIONS ON THE MATTERS SET OUT IN THAT ENDORSEMENT. THE CASE WAS LISTED FOR CONTINUATION OF HEARING AND IT BEING IMPOSSIBLE TO PROCEED ON THE DAY SET, THE APPLICANT SUBSEQUENTLY MADE WRITTEN REPRESENTATIONS TO THE BOARD. THE RESPONDENT HAS MADE NO REPRESENTATIONS ON THE MATTER.

2. IN CONNECTION WITH HIS WRITTEN REPRESENTATIONS ON THIS MATTER, COUNSEL FOR THE APPLICANT HAS SOUGHT TO SUBMIT EVIDENCE OF AN AMENDMENT TO THE BY-LAWS OF THE APPLICANT MADE FOLLOWING THE ISSUE OF THE BOARD'S ENDORSEMENT AND IN AN ATTEMPT TO OVERCOME THE DIFFICULTIES TO WHICH THE BOARD REFERRED IN THAT ENDORSEMENT. THE REPRESENTATIONS OF COUNSEL DEPENDED ON THE ADMISSABILITY OF SUCH EVIDENCE.

3. CLEARLY, IF THE PROFFERED AMENDMENT HAD BEEN BEFORE THE BOARD AT THE PROPER TIME, THE APPLICANT WOULD ON THE EVIDENCE, BE ENTITLED TO CERTIFICATION FOR THE BARGAINING UNIT DETERMINED BY THE BOARD AND WHICH COUNSEL HAS AGREED TO BE APPROPRIATE. THE BOARD HAS CONSISTENTLY HELD, HOWEVER, THAT IT WILL NOT ACCEPT EVIDENCE FILED AFTER THE HEARING OF ANY MATTER EXCEPT WHERE IN A PROPER CASE LEAVE HAS BEEN GRANTED AT THE HEARING FOR SUBSEQUENT FILING OF CERTAIN MATERIAL. IN THE INSTANT CASE, OF COURSE, THE EVIDENCE SOUGHT TO BE ADMITTED RELATES TO EVENTS WHICH TOOK PLACE AFTER THE HEARING ITSELF. IT IS OUR VIEW THAT SUCH EVIDENCE CANNOT PROPERLY BE ADMITTED. IN THIS CONNECTION REFERENCE MAY BE MADE TO THE VERSAFOOD SERVICES LIMITED CASE, BOARD FILE NO. 13329-67-R.

4. HAVING REGARD TO THE EVIDENCE PROPERLY BEFORE THE BOARD WE CAN ONLY CONCLUDE THAT THE APPLICANT COULD NOT AT THE MATERIAL TIMES TAKE INTO MEMBERSHIP ALL PERSONS WHO MIGHT COME WITHIN THE BARGAINING UNIT. FOR THE REASONS GIVEN IN THE ENDORSEMENT OF THE RECORD DATED NOVEMBER 16TH, 1967, THE APPLICATION IS DISMISSED.

13774-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. VARAMAE CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: H. A. HERRON AND R. MCKINNON FOR THE APPLICANT AND G. VANO AND P. ASMUS FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 10, 1968.

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4. THE RESPONDENT TOOK THE POSITION THAT IT WAS ALREADY BOUND BY A COLLECTIVE AGREEMENT WITH THE APPLICANT AND THAT THE APPLICATION WAS THEREFORE UNTIMELY, HAVING REGARD TO THE PROVISIONS OF SECTION 5 OF THE LABOUR RELATIONS ACT. IN SUPPORT OF ITS CONTENTION THE RESPONDENT FILED A DOCUMENT ENTITLED "WORKING AGREEMENT" DATED THE 28TH OF APRIL, 1967 BETWEEN THE RESPONDENT AND THE PETERBOROUGH BUILDING AND CONSTRUCTION TRADES COUNCIL. THE APPLICANT ADMITS THAT ON THAT DATE IT WAS A MEMBER OF THE SAID COUNCIL.

5. THE PURPOSE OF THE SAID AGREEMENT IS "TO ESTABLISH MUTUALLY SATISFACTORY RELATIONS BETWEEN THE COMPANY AND ITS EMPLOYEES ... AND TO STABILIZE AND ENCOURAGE THE CONSTRUCTION INDUSTRY IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND HALIBURTON". BY THE TERMS OF THE SAID AGREEMENT THE RESPONDENT RECOGNIZES THE COUNCIL AND ITS AFFILIATED UNIONS AS THE COLLECTIVE BARGAINING AGENCY FOR ALL ITS EMPLOYEES AND AGREES TO EMPLOY ONLY MEMBERS OF THE UNIONS AFFILIATED WITH THE COUNCIL. THE COUNCIL ON ITS PART AGREES THROUGH ITS AFFILIATED UNIONS TO SUPPLY COMPETENT WORKMEN. CLAUSE 5 OF THE AGREEMENT, HEADED, "WAGES, HOURS AND WORKING CONDITIONS", PROVIDES AS FOLLOWS:

5. THE COMPANY AGREES TO RECOGNIZE AND BE BOUND BY THE AGREEMENTS EXISTING BETWEEN EACH OF THE UNIONS AFFILIATED WITH THE COUNCIL AND SPECIFICALLY AGREES THAT THE PROVISIONS RELATING TO WAGES, HOURS AND WORKING CONDITIONS SET FORTH IN THE SAID AGREEMENTS SHALL BE BINDING ON THE COMPANY. IN THE EVENT ANY OF THE SAID CONDITIONS OF ANY OF THE SAID AGREEMENTS ARE ALTERED OR AMENDED AT ANY TIME DURING THE CURRENCY OF THIS AGREEMENT, THE COMPANY SHALL BE BOUND BY SUCH ALTERATIONS AND AMENDMENTS. THE SAID AGREEMENTS ARE AVAILABLE FOR INSPECTION BY THE COMPANY AT THE OFFICE OF THE COUNCIL AT 393 WATER ST., PETERBOROUGH; AND AT THE DEPARTMENT OF LABOUR, PARLIAMENT BUILDINGS, TORONTO. THE COUNCIL SHALL NOTIFY THE COMPANY OF ANY AMENDMENTS OR ALTERATIONS OF THE SAID AGREEMENTS.

THE FINAL CLAUSE OF THE WORKING AGREEMENT DEALS WITH ITS TERMINATION.

6. • WHILE CLAUSE 5, QUOTED ABOVE, COULD PERHAPS HAVE BEEN MORE CLEARLY WORDED, IT SEEMS TO US, READING THE CLAUSE AS A WHOLE, THAT IT WAS THE INTENTION OF THE PARTIES TO INCORPORATE INTO THE SAID AGREEMENT THE TERMS OF A COLLECTIVE AGREEMENT OR AGREEMENTS DEALING WITH WAGES, HOURS AND WORKING CONDITIONS THAT WERE IN EXISTENCE ON THE 28TH OF APRIL, 1967 BETWEEN, INTER ALIA, THE PRESENT APPLICANT AND OTHER CONTRACTORS COVERING THE COUNTIES OF PETERBOROUGH, VICTORIA AND HALIBURTON. THE AGREEMENTS IN QUESTION ARE IDENTIFIED AS BEING AVAILABLE FOR INSPECTION EITHER AT THE OFFICE OF THE COUNCIL OR AT THE DEPARTMENT OF LABOUR. THERE IS ON FILE WITH THE DEPARTMENT A COLLECTIVE AGREEMENT BETWEEN THE CARTER CONSTRUCTION CO. LTD. AND THE APPLICANT DATED DECEMBER 15, 1966. THE AGREEMENT WAS FILED WITH THE DEPARTMENT ON JANUARY 3, 1967.

7. HAVING REGARD TO THE ABOVE CIRCUMSTANCES, IT IS OUR FINDING THAT AS OF THE DATE OF THE MAKING OF THE PRESENT APPLICATION, OCTOBER 23, 1967, THERE WAS A BINDING COLLECTIVE AGREEMENT IN EXISTENCE BETWEEN THE APPLICANT AND THE RESPONDENT CONSISTING OF THE WORKING AGREEMENT REFERRED TO ABOVE, TOGETHER WITH THE CLAUSES IN THE

AGREEMENT BETWEEN CARTER CONSTRUCTION AND THE APPLICANT DEALING WITH WAGES, HOURS AND WORKING CONDITIONS. IF THE PARTIES ARE IN ANY DOUBT AS TO THE EXACT TERMS WHICH ARE BINDING ON THEM, THEN PRESUMABLY THEY WILL RESOLVE THESE DIFFERENCES UNDER THE TERMS OF THE GRIEVANCE AND/OR ARBITRATION PROVISIONS CONTAINED IN THEIR AGREEMENT.

8. HAVING REGARD TO THE ABOVE FINDING THAT THE PARTIES ARE BOUND BY A COLLECTIVE AGREEMENT AND HAVING REGARD TO THE PRINCIPLES SET OUT IN THE LOBLAW GROCETERIAS CASE, 1946 C.L.L.C. PARA. 16,411, THIS PROCEEDING IS HEREBY TERMINATED.

13798-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT)
V. CANADIAN HANSON & VAN WINKLE COMPANY, LIMITED (RESPONDENT) V.
GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT HEARING: IAN SCOTT, E. CALANDRO AND R. BARRETT FOR THE APPLICANT, D. CHURCHILL-SMITH, E.A. SMITH AND V.L. RICHARDS FOR THE RESPONDENT, C.E. LEWIS FOR THE OBJECTORS.

DECISION OF THE BOARD: JANUARY 4, 1968.

1. AT THE HEARING IN THIS MATTER ON DECEMBER 6TH, 1967, THE BOARD MADE ITS USUAL INQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE STATEMENTS OF DESIRE FILED IN OPPOSITION TO THE INSTANT APPLICATION. THE BOARD ALSO HEARD THE CHARGES OF MANAGEMENT INFLUENCE WITH REGARD TO THE PETITIONS FILED BY THE APPLICANT. AS A MATTER OF CHRONOLOGICAL SEQUENCE THE BOARD PROPOSES TO OUTLINE FIRST THE EVIDENCE ADDUCED RELATING TO THE APPLICANT'S CHARGES.

2. THE ONLY PERSON WHO TESTIFIED CONCERNING BOTH THE PETITION AND THE CHARGES WAS GORDON KILLEN, A LEAD HAND EMPLOYED IN THE ELECTRICAL DEPARTMENT OF THE RESPONDENT'S PLANT. KILLEN, WHO HAS BEEN IN THE EMPLOY OF THE RESPONDENT FOR TWENTY-TWO YEARS, HAS BEEN A MEMBER OF THE WORKERS' COUNCIL OVER THE PAST FIFTEEN YEARS OF ITS EXISTENCE AND IS CURRENTLY ONE OF ITS SENIOR OFFICERS. THE WORKERS' COUNCIL IS COMPOSED OF REPRESENTATIVES OF THE VARIOUS DEPARTMENTS OF THE RESPONDENT'S PLANT AND THESE REPRESENTATIVES ARE ELECTED EACH YEAR. THE COUNCIL GENERALLY MEETS WITH REPRESENTATIVES OF MANAGEMENT OF THE RESPONDENT ON THE AVERAGE OF ONCE A MONTH. AT THESE MEETINGS WHICH ARE CALLED AT THE BEHEST OF MANAGEMENT, WAGES, WORKING CONDITIONS AND OTHER CURRENT PROBLEMS ARE DISCUSSED AND DEALT WITH.

3. A MEETING BETWEEN THE WORKERS' COUNCIL AND MEMBERS OF MANAGEMENT OF THE RESPONDENT TOOK PLACE IN SEPTEMBER. AT THAT

MEETING, ACCORDING TO KILLEN, THE EMPLOYEES INQUIRED AS TO WHETHER THEY COULD EXPECT A MID-TERM WAGE INCREASE IN VIEW OF THE RISE IN THE COST OF LIVING. (THE EMPLOYEES REGULARLY RECEIVED AN ANNUAL INCREASE AT THE BEGINNING OF EACH YEAR. THEIR LAST INCREASE WAS ON JANUARY 1ST, 1967.) THE COMPANY OFFICIAL REPLIED THAT THEY WERE KEEPING THE SITUATION UNDER SURVEILLANCE AND WOULD REPORT ON THIS MATTER AT THE NEXT MEETING. THE COMPANY CALLED THE NEXT MEETING WITH THE WORKERS' COUNCIL ON OCTOBER 3RD. AT THAT MEETING THE EMPLOYEES INQUIRED AS TO HOW THE RECENT SETTLEMENT WHICH HAD BEEN MADE AT THE CANADIAN INDUSTRIES LIMITED PLANT IN SEPTEMBER WOULD EFFECT THE WAGE RATES AT THE RESPONDENT'S PLANT. ACCORDING TO KILLEN'S TESTIMONY AND THE MINUTES OF THE MEETING WHICH WERE FILED WITH THE BOARD, THE COMPANY REPLIED THAT THE WAGE RATES WERE BASICALLY ESTABLISHED ON COMMUNITY LEVELS AND THAT CANADIAN INDUSTRIES LIMITED WAS ONLY ONE OF THE MANY INDUSTRIES IN THE COMMUNITY. THE COMPANY FURTHER ADVISED THE WORKERS' COUNCIL THAT IT PLANNED TO IMPLEMENT A JOB EVALUATION PROGRAMME WHICH IT WAS ANTICIPATED WOULD BE COMPLETED BY DECEMBER 1ST, 1967. THE COMPANY OFFICIALS INFORMED THE WORKERS' COUNCIL THAT BOTH THE EVALUATION PROGRAMME AND THE WAGE SETTLEMENT AT CANADIAN INDUSTRIES LIMITED WOULD BE TAKEN INTO ACCOUNT AT THE END OF THE YEAR WHEN WAGES WERE ADJUSTED.

4. A FURTHER MEETING WITH THE WORKERS' COUNCIL WAS CALLED BY THE MANAGEMENT OF THE RESPONDENT ON OCTOBER 19TH. KILLEN TESTIFIED THAT AT THAT MEETING THE MANAGEMENT REPRESENTATIVES ADVISED THE COUNCIL MEMBERS THAT THE COMPANY HAD ENCOUNTERED DIFFICULTIES IN ITS JOBS' EVALUATION PROGRAMME, AND THAT IT COULD NOT BE CARRIED OUT AS PREVIOUSLY PLANNED. THE COUNCIL WAS FURTHER ADVISED AT THE SAME TIME THAT THE COMPANY WAS GIVING A SIX PER CENT WAGE INCREASE IN ALL WAGE CLASSIFICATIONS EFFECTIVE OCTOBER 16TH. DURING THIS SAME MEETING, SOME DISCUSSION ENSUED CONCERNING THE GRIEVANCE PROCEDURE. IT APPEARS THAT THE EMPLOYEES EXPRESSED THE VIEW THAT THERE WAS BIAS ON THE PART OF THE FOREMAN AGAINST THE EMPLOYEES AND THAT UNDER THE PRESENT PROCEDURES GRIEVANCES WERE NOT SATISFACTORILY SETTLED. THE COMPANY UNDERTOOK TO REVAMP THE WHOLE GRIEVANCE PROCEDURE.

5. A THIRD MEETING OF THE WORKERS' COUNCIL WAS CALLED BY THE COMPANY IN THE LATTER PART OF OCTOBER. MANAGEMENT ADVISED THE COUNCIL THAT THERE WOULD BE FURTHER ADJUSTMENTS IN THE WAGE RATES OF CERTAIN EMPLOYEES TO BRING THEIR RATES INTO LINE WITH WAGES BEING PAID BY SOME FIRMS OUTSIDE THE COMMUNITY AREA. CHANGES IN THE GRIEVANCE PROCEDURE WERE ALSO DEALT WITH AT THIS MEETING. THERE HAVE BEEN NO FURTHER MEETINGS BETWEEN MANAGEMENT AND THE WORKERS' COUNCIL SINCE THE LAST MEETING IN OCTOBER.

6. THERE WAS FILED WITH THE BOARD A COPY OF A LETTER DATED OCTOBER 23RD, OVER THE SIGNATURE OF V. L. RICHARDS, VICE-PRESIDENT OF THE RESPONDENT COMPANY, WHICH APPARENTLY WAS SENT TO EACH EMPLOYEE. IN THIS LETTER RICHARDS STATED THAT HE UNDERSTOOD THAT THE EMPLOYEES WERE ONCE AGAIN CONSIDERING JOINING A UNION. HE POINTED OUT THAT SUCH A STEP COULD HAVE SERIOUS CONSEQUENCES FOR BOTH THE COMPANY AND THE EMPLOYEES AND ASKED

THE EMPLOYEES TO CONSIDER SOME OF THE ASPECTS OF UNIONISM WHICH ARE USUALLY OVERLOOKED. HE NOTED THAT THE LAW PROVIDES THAT THE EMPLOYEES ARE FREE TO CHOOSE A BARGAINING AGENT AND THAT THE CHOICE ACCORDINGLY WAS THEIRS. RICHARDS, HOWEVER, WENT ON TO RELATE THE LABOUR TROUBLES THAT HAD BEEN ENCOUNTERED AT CANADIAN INDUSTRIES LIMITED IN 1967. HE NOTED THAT AS A RESULT OF A STRIKE C-I-L NOW HAD FEWER EMPLOYEES THAN BEFORE DUE TO A LOSS OF ORDERS. HE STATED THAT THE RESPONDENT FOLLOWED THE WAGE PATTERN SET BY CANADIAN INDUSTRIES LIMITED AND THAT ACCORDINGLY THE EMPLOYEES COULD EXPECT TO RECEIVE THE SAME BENEFITS AS THE EMPLOYEES OF CANADIAN INDUSTRIES LIMITED WITHOUT BARGAINING OR STRIKES AND WITHOUT BEING REQUIRED TO PAY FIFTY OR SIXTY DOLLARS A YEAR IN UNION DUES.

7. RICHARDS IN HIS LETTER SAID THAT IT WAS HIS CONVICTIONS AFTER TALKING WITH A NUMBER OF EMPLOYEES RECENTLY THAT THERE SHOULD BE AN IMPROVEMENT IN THE COMPANY'S METHOD OF HANDLING GRIEVANCE COMPLAINTS. HE STATED THAT HE HAD HEARD IT SAID THAT SOME EMPLOYEES WERE AFRAID OF REGISTERING COMPLAINTS WITH THE COMPANY FOR FEAR OF RETALIATION. HE WENT ON TO ASSURE THE EMPLOYEES THAT AS MANAGER OF THE PLANT HE WOULD NOT TOLERATE SUCH BEHAVIOUR AND ALREADY HAVE TAKEN SOME STEPS TO CORRECT ABUSES. HE UNDERTOOK TO DO EVEN MORE TO IMPROVE THE GRIEVANCE HANDLING PROCEDURE.

8. ROD BARRETT TESTIFIED THAT HE WAS THE ORGANIZER FOR THE APPLICANT IN CHARGE OF THE ORGANIZING CAMPAIGN AT THE RESPONDENT'S PLANT. HIS EVIDENCE IS THAT THE CAMPAIGN COMMENCED IN AUGUST, BUT THAT THE FIRST ACTUAL MEETING WITH EMPLOYEES WAS NOT HELD UNTIL OCTOBER 16TH. A SECOND MEETING WAS HELD ON OCTOBER 23RD. KILLEN TESTIFIED THAT HE ONLY HEARD OF THE UNION ORGANIZING CAMPAIGN ON OCTOBER 19TH, THE DAY THE COMPANY ANNOUNCED THE SIX PER CENT WAGE INCREASE. HE DID, HOWEVER, GO TO THE SECOND UNION MEETING ON OCTOBER 23RD WHICH WAS ATTENDED BY APPROXIMATELY 30 EMPLOYEES.

9. WE WOULD NOW CONSIDER THE EVIDENCE OF KILLEN RELATING TO THE PETITIONS. HIS TESTIMONY IS THAT ON NOVEMBER 2ND HE SAW THE NOTICE TO EMPLOYEES OF THE APPLICATION (FORM 5). THAT SAME EVENING HE PREPARED A PETITION (HEREINAFTER REFERRED TO AS THE FIRST PETITION) WHICH WAS TYPED BY HIS SISTER-IN-LAW. THE FOLLOWING DAY BETWEEN APPROXIMATELY 10.00 A.M. AND 3.00 P.M. HE CIRCULATED THE FIRST PETITION THROUGHOUT THE VARIOUS DEPARTMENTS OF THE PLANT DURING WORKING HOURS. HE PERSONALLY SECURED FIVE OF THE EIGHT SIGNATURES ON THAT DOCUMENT, THE REMAINING THREE BEING SECURED BY OTHER EMPLOYEES TO WHOM HE GAVE THE FIRST PETITION.

10. KILLEN TESTIFIED THAT HE HAD SOME DOUBTS AS TO WHETHER THE MANNER IN WHICH THE FIRST PETITION WAS PREPARED WAS CORRECT. HE ACCORDINGLY ARRANGED BY TELEPHONE TO ATTEND AT THE OFFICE OF A SOLICITOR ON MONDAY, NOVEMBER 6TH. HE ASKED HIS FOREMAN ON THAT DAY FOR PERMISSION TO LEAVE THE PLANT AT 10.00 A.M. ON PERSONAL BUSINESS. THE FOREMAN GAVE HIS CONSENT WITHOUT ASKING ANY QUESTIONS. KILLEN DID NOT RETURN TO THE PLANT AT ALL THAT DAY. ACCORDING TO KILLEN THE SOLICITOR ADVISED KILLEN TO DRAW UP INDIVIDUAL PETITIONS FOR EACH OF THE EMPLOYEES TO SIGN. KILLEN

FOLLOWED THESE INSTRUCTIONS AND HIS WIFE PREPARED THE WRITTEN DOCUMENTS.

11. THE FOLLOWING MORNING, NOVEMBER 7TH, BETWEEN 7.00 AND 8.00 A.M., KILLEN WAITED OUTSIDE THE PLANT PREMISES AND SECURED ALL OF THE SIGNATURES ON THE PETITIONS WHICH WERE FILED WITH THE BOARD IN OPPOSITION TO THIS APPLICATION. KILLEN'S WORKING HOURS COMMENCE AT 7.00 A.M. ACCORDING TO HIS TESTIMONY HIS FOREMAN WAS NOT AROUND SO HE DID NOT ASK THE PERMISSION OF ANYONE TO BE ABSENT FROM HIS JOB BETWEEN 7.00 AND 8.00 A.M. HE DID, HOWEVER, ASK HIS FOREMAN FOR PERMISSION TO LEAVE THE PLANT AT 10.00 A.M., AGAIN ON PERSONAL MATTERS, AND WAS ALLOWED TO LEAVE WITHOUT ANY QUESTIONS BEING ASKED. HE MAILED THE PETITIONS TO THE BOARD AND DID NOT RETURN TO THE PLANT THAT DAY.

12. HERE WE HAVE A SITUATION WHERE AS LATE AS OCTOBER 3RD, 1967, THE RESPONDENT ADVISED THAT WORKERS' COUNCIL THAT IT WAS IMPLEMENTING A JOB EVALUATION PROGRAMME AND THAT ANY CONSIDERATIONS OF WAGE ADJUSTMENTS WERE BEING DEFERRED UNTIL THE END OF THE YEAR. SOME TWO WEEKS LATER, HOWEVER, THE RESPONDENT INFORMS THE WORKERS' COUNCIL THAT THE JOB EVALUATION PROGRAMME IS BEING SCRAPPED AND ANNOUNCED A SIX PER CENT WAGE INCREASE. A THIRD MEETING WITH THE WORKERS' COUNCIL WAS CALLED BY THE RESPONDENT IN OCTOBER TO ANNOUNCE FURTHER WAGE ADJUSTMENTS AND TO GIVE AN UNDERTAKING TO REVISE THE CURRENT GRIEVANCE PROCEDURE. SIGNIFICANTLY, ALTHOUGH THE APPLICANT HAD QUIETLY BEEN ORGANIZING THE RESPONDENT'S EMPLOYEES SINCE AUGUST, THE FIRST OPEN MEETING CALLED BY THE UNION WAS ON OCTOBER 16TH. THE SEQUENCE OF EVENTS CLEARLY SUGGESTS THAT THE RESPONDENT BETWEEN THE OCTOBER 3RD AND OCTOBER 19TH MEETING BECAME AWARE OF THE APPLICANT'S ORGANIZING CAMPAIGN AND ABRUPTLY DISCARDED ITS JOB EVALUATION PROGRAMME, AND IMMEDIATELY GRANTED AN "ACROSS-THE-BOARD" WAGE INCREASE IN AN EFFORT TO THWART THE APPLICANT'S EFFORTS. THE EXPLANATION OFFERED BY THE RESPONDENT WAS THAT IT WAS ENCOUNTERING "DIFFICULTIES" IN IMPLEMENTING ITS JOB EVALUATION PROGRAMME. THE NATURE OF THOSE "DIFFICULTIES", HOWEVER, WAS NOT EXPLAINED. CERTAINLY THE RESPONDENT WAS FULLY AWARE OF AN IMMINENT APPLICATION FOR CERTIFICATION BY THE UNION WHEN RICHARDS SENT OUT HIS LETTER OF OCTOBER 23RD TO ALL OF THE EMPLOYEES. THIS LETTER WE WOULD ADD COULD LEAVE NO DOUBT IN THE MINDS OF THE EMPLOYEES AS TO THE ATTITUDE OF THE RESPONDENT TOWARDS THE APPLICANT.

13. AFTER THE APPLICATION FOR CERTIFICATION IN FACT WAS MADE, IT WAS GORDEN KILLEN, THE LEADING FIGURE IN THE WORKERS' COUNCIL DURING THE UNPRECEDENTED THREE MEETINGS WITH THE RESPONDENT IN THE MONTH OF OCTOBER, WHO WAS THE SOLE INSTIGATOR OF THE PETITIONS FILED IN OPPOSITION TO THE APPLICATION. IT IS SAFE FOR US TO ASSUME THAT HIS ROLE IN THE WORKERS' COUNCIL WAS KNOWN TO ALL OF THE EMPLOYEES. INDEED HE TESTIFIED THAT HE "SPREAD" THE ANNOUNCEMENT OF THE SIX PER CENT WAGE INCREASE. MOREOVER, KILLEN OPENLY CIRCULATED THE FIRST PETITIONS IN THE PLANT DURING WORKING HOURS AND LEFT HIS WORK STATION FOR AN HOUR TO SECURE THE SIGNATURES ON THE SECOND SET OF

PETITIONS. OBVIOUSLY HE WAS NOT CONCERNED THAT HIS ACTIVITIES DURING WORKING HOURS WOULD CAUSE ANY DISPLEASURE TO THE RESPONDENT AND IT MUST HAVE APPEARED TO THE OTHER EMPLOYEES THAT HIS ACTIVITIES HAD, AT THE LEAST, THE TACIT SUPPORT OF MANAGEMENT. IN LIGHT OF THE READY FASHION IN WHICH KILLEN'S FOREMAN ALLOWED HIM TO BE ABSENT FROM WORK FOR NEARLY TWO FULL DAYS LEADS US TO CONCLUDE THAT, IN FACT, KILLEN HAD AT LEAST THE TACIT SUPPORT OF THE RESPONDENT. THE ACTIONS OF THE RESPONDENT IN THE MONTH OF OCTOBER, THE ROLE PLAYED BY KILLEN IN THE WORKERS' COUNCIL AND THE MANNER IN WHICH HE CIRCULATED THE PETITIONS AFTER THE INSTANT APPLICATION WAS MADE MIGHT EVEN SUGGEST TO THE EMPLOYEES THAT KILLEN WAS PROMOTING THE PETITIONS AT THE BEHEST OF THE RESPONDENT. THE EMPLOYEES IN ANY EVENT WOULD HAVE REASON TO BE APPREHENSIVE THAT THEIR SUPPORT OR NON-SUPPORT OF THE PETITIONS WOULD BECOME KNOWN TO THE RESPONDENT.

14. IN ALL THE CIRCUMSTANCES WE ARE NOT PREPARED TO ACCEPT THE PETITIONS AS REPRESENTING A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO SIGNED THEM. THE PETITIONS ACCORDINGLY DO NOT SO WEAKEN OR QUALIFY THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

15. THE BOARD REVOKES PARAGRAPH 7 OF ITS DECISION OF NOVEMBER 16TH, 1967, AND SUBSTITUTES THE FOLLOWING THEREFOR:

7. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT IN THE BOROUGH OF ETOBICOKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, TECHNICAL AND ENGINEERING DEPARTMENT STAFF AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

16. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 7TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

17. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13842-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. GENERAL SPRING PRODUCTS LIMITED (RESPONDENT) V. GENERAL SPRING PRODUCTS UNION (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: ROBERT WHITE, LES. RUDRUM AND ROBERT HALEY FOR THE APPLICANT, J. K. SIMS AND R. A. COOPER FOR THE RESPONDENT, G. A. MACKAY, Q.C., AND HENRY SCHMIDT FOR THE INTERVENER.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: JANUARY 29, 1968.

1. ON NOVEMBER 21ST, 1967, THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF CERTAIN EMPLOYEES OF THE RESPONDENT IN THIS MATTER. ON NOVEMBER 23RD, 1967, THE REGISTRAR ADVISED THE PARTIES BY TELEGRAM THAT THE PRE-HEARING VOTE WILL BE HELD ON TUESDAY, DECEMBER 5TH, 1967. SUBSEQUENTLY, IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE, THE REGISTRAR WROTE TO THE PARTIES ON NOVEMBER 24TH, 1967 AND DREW THE PARTIES' ATTENTION TO HIS DIRECTION WHICH READS AS FOLLOWS:

I DIRECT ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF FRIDAY, THE 1ST DAY OF DECEMBER, 1967, UNTIL THE VOTE IS TAKEN.

2. MR. RUDRUM, THE INTERNATIONAL REPRESENTATIVE OF THE APPLICANT, HAD BEEN CONTACTED BY THE RADIO ANNOUNCER OF CHYM, A RADIO STATION LOCATED IN KITCHENER, AND AN INQUIRY WAS MADE OF MR. RUDRUM AS TO THE TIME WHEN THE VOTE WOULD TAKE PLACE. MR. RUDRUM ADVISED THE RADIO ANNOUNCER THAT THE DATE OF THE VOTE AT THAT TIME WAS UNKNOWN TO HIM BUT FURTHER ADVISED HE WOULD INFORM THE RADIO ANNOUNCER OF THE DATE AS SOON AS THIS INFORMATION WAS AVAILABLE. ON NOVEMBER 23RD, AFTER HAVING BEEN ADVISED OF THE DATE BY THE REGISTRAR, MR. RUDRUM DELIVERED TO THE RADIO STATION THE FOLLOWING NEWS RELEASE:

Nov. 23

THE INTERNATIONAL UNION (U.A.W.) MADE APPLICATION TO THE ONTARIO LABOUR RELATIONS BOARD ON NOV. 3 1967 FOR A VOTE TO REPRESENT THE EMPLOYEES OF GENERAL SPRINGS PRODUCTS HERE IN KITCHENER. A MEETING WAS HELD BY AN O.L.R.B. OFFICIAL ON NOV. 17 1967 ON THE APPLICATION. LES RUDRUM, INTERNATIONAL REPRESENTATIVE OF THE U.A.W. IN THIS AREA WAS NOTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD THAT THEY HAVE SET DEC. 5 FOR THE VOTE. MR. RUDRUM EXPECTS THE U.A.W. TO WIN, AS THE VAST MAJORITY OF THE WORKERS HAVE SIGNED U.A.W. CARDS.

3. ON NOVEMBER 23RD, A NEWSCAST CONTAINING THE INFORMATION SET FORTH IN THE NEWS RELEASE WAS BROADCAST. THE NEWS RELEASE WHICH WAS DELIVERED BY MR. RUDRUM WAS RETAINED ON FILE BY THE RADIO STATION. MR. RUDRUM HAD NO FURTHER CONTACT WITH ANYONE FROM THE RADIO STATION BETWEEN NOVEMBER 23RD AND THE DATE THE VOTE WAS TAKEN

NOR DID ANYONE REPRESENTING THE APPLICANT CONTACT THE RADIO STATION DURING THAT PERIOD.

4. SUBSEQUENTLY, ON DECEMBER 3RD, 1967, THE CHYM NEWSCASTER RESURRECTED THE NEWS RELEASE AND REWROTE A NEWS DISPATCH FOR BROADCAST ON DECEMBER 3RD. THE NEWS DISPATCH DELIVERED BY THE NEWS ANNOUNCER READS AS FOLLOWS:

A VOTE WILL BE HELD THIS MONTH AMONG 1100 PLANT WORKERS AT GENERAL SPRING PRODUCTS LIMITED OF KITCHENER. THE VOTE CALLED FOR BY THE ONTARIO LABOUR RELATIONS BOARD WILL DECIDE WHETHER OR NOT THE WORKERS WILL SEEK MEMBERSHIP IN THE U.A.W. UNION.

EARLY THIS YEAR THE U.A.W. STARTED A MEMBERSHIP DRIVE IN THE PLANT AND AN APPLICATION FOR CERTIFICATION VOTE WAS MADE NOVEMBER 3RD.

A UNION OFFICIAL INDICATED THAT THE UNION IS EXPECTED TO HAVE NO DIFFICULTY IN WINNING THE WORKERS OVER.

THE EMPLOYEES AT GENERAL SPRINGS PRODUCTS ARE CURRENTLY AFFILIATED WITH A COMPANY UNION.

THIS NEWS DISPATCH WAS CARRIED ON THE RADIO STATION SEVERAL TIMES ON DECEMBER 3RD.

5. AGAIN, ON DECEMBER 4TH, A SIMILAR NEWS DISPATCH WAS BROADCAST WHICH READS AS FOLLOWS:

IN AN ONTARIO LABOUR BOARD SUPERVISED VOTE SOME 1100 GENERAL SPRING PRODUCTS WORKERS ARE ELIGIBLE TO VOTE TOMORROW ON THE QUESTION OF MEMBERSHIP IN THE U.A.W. UNION. THE EMPLOYEES ARE CURRENTLY REPRESENTED BY THE GENERAL SPRING PRODUCTS UNION, AN INDEPENDENT GROUP CERTIFIED IN 1952. FOLLOWING A MEMBERSHIP DRIVE EARLIER THIS YEAR, THE U.A.W. APPLIED TO THE LABOUR BOARD NOV. 3 FOR CERTIFICATION. THE BOARD SUBSEQUENTLY ORDERED THE VOTE WHICH WILL BE HELD TOMORROW.

6. ON TUESDAY, DECEMBER 5TH, THE DATE OF THE VOTE, A FURTHER NEWS DISPATCH WAS BROADCAST ON THE RADIO STATION IN THE FOLLOWING TERMS:

SOME 1100 EMPLOYEES OF GENERAL SPRING IN KITCHENER ARE SCHEDULED TO VOTE TODAY, SUPERVISED BY THE ONTARIO LABOUR RELATIONS BOARD, ON THE QUESTION OF MEMBERSHIP IN THE U.A.W. THE EMPLOYEES ARE CURRENTLY REPRESENTED BY AN INDEPENDENT GROUP, KNOWN BY SOME AS A COMPANY UNION. FOLLOWING A MEMBERSHIP DRIVE EARLY THIS YEAR, THE U.A.W. APPLIED FOR CERTIFICATION AND THE VOTE TAKES PLACE TODAY.

7. THE INTERVENER OBJECTED TO THE NEWS BROADCAST ON THE GROUNDS THAT THE APPLICANT HAD VIOLATED THE 72-HOUR QUIET PERIOD IMMEDIATELY PRECEDING THE VOTE CONTRARY TO THE INSTRUCTIONS OF THE REGISTRAR. THE INTERVENER REQUESTED THAT EITHER THE APPLICATION OF THE APPLICANT BE DISMISSED OR, IN THE ALTERNATIVE, THAT A NEW REPRESENTATION VOTE BE CONDUCTED IN ORDER THAT THE WISHES OF THE EMPLOYEES OF THE RESPONDENT BE PROPERLY ASCERTAINED IN VIEW OF THE BROADCAST WHICH THE INTERVENER ALLEGED WAS SLANTED IN FAVOUR OF THE APPLICANT.

8. THERE IS NO EVIDENCE BEFORE THE BOARD FROM WHICH THE BOARD COULD INFER THAT THE APPLICANT HAD IN ANY WAY INDUCED THE RADIO STATION TO BROADCAST INFORMATION CONCERNING THE VOTE DURING THE QUIET PERIOD. TO FIND THAT A TRADE UNION MUST TAKE STEPS TO PREVENT NORMAL ELECTIONEERING MATERIAL FROM BEING RESURRECTED AND REUSED BY PUBLIC NEWS MEDIA DURING THE QUIET PERIOD WOULD BE TO UNDULY FETTER AND RESTRICT THE DISSEMINATION OF ELECTIONEERING AND PROPAGANDA INFORMATION DURING THE NORMAL CAMPAIGN PRIOR TO A REPRESENTATION VOTE. IF THE EVIDENCE INDICATED THAT THE APPLICANT HAD PLANTED A NEWS STORY IN SUCH A WAY THAT IT COULD BE FOUND THAT THE APPLICANT INTENDED TO CAUSE A PUBLIC NEWS SERVICE TO BROADCAST INFORMATION DURING THE QUIET PERIOD, A DIFFERENT RESULT MIGHT FOLLOW. ON THE FACTS OF THIS CASE, HOWEVER, INFORMATION WAS GIVEN AND USED ON NOVEMBER 23RD WHICH IN NO WAY COULD BE SAID TO BE OBJECTIONABLE. THE FACT THAT SUCH INFORMATION WAS EMBELLISHED AND REUSED AT A LATER DATE CANNOT OF ITSELF DESTROY THE RESULTS OF THE REPRESENTATION VOTE IN THIS INSTANCE.

9. THE BOARD THEREFORE FINDS IN ALL THE CIRCUMSTANCES OF THIS CASE THAT THE APPLICANT IN THIS MATTER HAS NOT VIOLATED THE 72-HOUR QUIET PERIOD IMPOSED AT THE DIRECTION OF THE REGISTRAR.

10. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

11. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, PLANT GUARDS, NURSES, OFFICE, CLERICAL, TECHNICAL AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

12. FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE GENERAL FOREMAN'S CLERKS AND TIMEKEEPER'S CLERKS AND SHIPPING AND BILLING CLERKS ARE CLERICAL STAFF WHO ARE NOT INCLUDED IN THE BARGAINING UNIT.

13. THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

14. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

16. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

DECISION OF BOARD MEMBER H. F. IRWIN:

JANUARY 29, 1968.

1. I DISSENT.

2. IN HIS NOTICE TO THE PARTIES DATED NOVEMBER 24TH, 1967 THAT THIS BOARD HAD DIRECTED THAT A PRE-HEARING TWO WAY REPRESENTATION VOTE BE TAKEN BETWEEN THE APPLICANT AND THE INTERVENER TRADE UNIONS, THE REGISTRAR, IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE, DIRECTED ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF FRIDAY, DECEMBER 1ST, 1967 UNTIL THE VOTE HAD BEEN TAKEN ON TUESDAY, DECEMBER 5TH, 1967. THE QUIET PERIOD, THEREFORE, COMPRISED THE FULL 24 HOUR PERIODS OF DECEMBER 2ND, 3RD AND 4TH AND UNTIL THE TIME THE POLLS CLOSED ON DECEMBER 5TH, 1967.

3. THE EVIDENCE ADDUCED AT THE HEARING IS THAT THE APPLICANT UNION (UAW) HAD PLACED PAID RADIO ANNOUNCEMENTS WITH RADIO STATION CHYM DURING NOVEMBER, 1967. THIS STATION IS LOCATED AT KITCHENER. IT IS EQUIPPED WITH A 10,000 WATT TRANSMITTER, BROADCASTS ON A WAVE LENGTH OF 1490 KILOCYCLES AND COVERS THE KITCHENER METROPOLITAN AREA AND BEYOND. THE SEVEN (7) PAID ANNOUNCEMENTS WERE BROADCAST OVER THE STATION ON NOVEMBER 17TH (2), 18TH (2) AND 19TH (3), 1967.

4. AT THE REQUEST OF GLEN THURSTON, AN ANNOUNCER AT RADIO STATION CHYM, LESLIE RUDRUM, AN INTERNATIONAL REPRESENTATIVE OF THE APPLICANT UNION, DELIVERED TO HIM ON NOVEMBER 23RD THE FOLLOWING NEWS RELEASE:

THE INTERNATIONAL UNION (U.A.W.) MADE APPLICATION TO THE ONTARIO LABOUR RELATIONS BOARD ON NOV. 3 1967 FOR A VOTE TO REPRESENT THE EMPLOYEES OF GENERAL SPRINGS PRODUCTS HERE IN KITCHENER. A MEETING WAS HELD BY AN O.L.R.B. OFFICIAL ON NOV. 17 1967 ON THE APPLICATION. LES RUDRUM, INTERNATIONAL REPRESENTATIVE OF THE U.A.W. IN THIS AREA WAS NOTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD THAT THEY HAVE SET DEC. 5 FOR THE VOTE. MR. RUDRUM EXPECTS THE U.A.W. TO WIN, AS THE VAST MAJORITY OF THE WORKERS HAVE SIGNED U.A.W. CARDS.

5. JUST PRIOR TO DECEMBER 3RD, THE CHYM NEWSCASTER TOOK THE ABOVE NEWS RELEASE FROM THE "FUTURES FILE", WHERE IT HAD BEEN PLACED ON NOVEMBER 23RD, AND REWROTE IT. IT WAS BROADCAST AT 3 P.M. AND 5 P.M. ON SUNDAY, DECEMBER 3RD, AND READS AS FOLLOWS:

A VOTE WILL BE HELD THIS MONTH AMONG 1100 PLANT WORKERS AT GENERAL SPRING PRODUCTS LIMITED OF KITCHENER. THE VOTE CALLED FOR BY THE ONTARIO LABOUR RELATIONS BOARD WILL DECIDE WHETHER OR NOT THE WORKERS WILL SEEK MEMBERSHIP IN THE U.A.W. UNION.

EARLY THIS YEAR THE U.A.W. STARTED A MEMBERSHIP DRIVE IN THE PLANT AND AN APPLICATION FOR CERTIFICATION VOTE WAS MADE NOVEMBER 3RD.

A UNION OFFICIAL INDICATED THAT THE UNION IS EXPECTED TO HAVE NO DIFFICULTY IN WINNING THE WORKERS OVER.

THE EMPLOYEES AT GENERAL SPRINGS PRODUCTS ARE CURRENTLY AFFILIATED WITH A COMPANY UNION.

6. A SECOND NEWSCAST WAS WRITTEN AND BROADCAST OVER THE SAME STATION AT 3:00 P.M. ON MONDAY, DECEMBER 4TH, AND READS AS FOLLOWS:

IN AN ONTARIO LABOUR BOARD SUPERVISED VOTE SOME 1100 GENERAL SPRING PRODUCTS WORKERS ARE ELIGIBLE TO VOTE TOMORROW ON THE QUESTION OF MEMBERSHIP IN THE U.A.W. UNION. THE EMPLOYEES ARE CURRENTLY REPRESENTED BY THE GENERAL SPRING PRODUCTS UNION, AN INDEPENDENT GROUP CERTIFIED IN 1952. FOLLOWING A MEMBERSHIP DRIVE EARLIER THIS YEAR, THE U.A.W. APPLIED TO THE LABOUR BOARD NOV. 3 FOR CERTIFICATION. THE BOARD SUBSEQUENTLY ORDERED THE VOTE WHICH WILL BE HELD TOMORROW.

FROM WHAT SOURCE DID THE NEWSCASTER OBTAIN THE DATE OF CERTIFICATION? IT IS NOT MENTIONED IN THE NEWS RELEASE DATED NOVEMBER 23RD, SUPRA.

7. ON TUESDAY, DECEMBER 5TH, THE DAY OF THE VOTE, A FURTHER NEWS DISPATCH THAT WAS WRITTEN BY THE NEWSCASTER WAS BROADCAST OVER THE RADIO STATION AT 9:00 A.M. AND THURSTON TESTIFIED THAT THERE MAY HAVE BEEN ADDITIONAL BROADCASTS DURING THAT DAY. IT READS AS FOLLOWS:

SOME 1100 EMPLOYEES OF GENERAL SPRING IN KITCHENER ARE SCHEDULED TO VOTE TODAY, SUPERVISED BY THE ONTARIO LABOUR RELATIONS BOARD, ON THE QUESTION OF MEMBERSHIP IN THE U.A.W. THE EMPLOYEES ARE CURRENTLY REPRESENTED BY AN INDEPENDENT GROUP, KNOWN BY SOME AS A COMPANY UNION. FOLLOWING A MEMBERSHIP DRIVE EARLY THIS YEAR, THE U.A.W. APPLIED FOR CERTIFICATION AND THE VOTE TAKES PLACE TODAY.

8. IN ESSENCE, RADIO STATION CHYM ACCEPTED AT LEAST SEVEN (7) PAID RADIO ANNOUNCEMENTS FROM THE APPLICANT UNION. THE BROADCASTS WERE INTENDED TO REACH THE RANK AND FILE PLANT EMPLOYEES OF THE RESPONDENT AND THEREBY INDUCE THEM TO JOIN AND SUPPORT THE APPLICANT UNION WHICH SOUGHT TO DISPLACE THE INTERVENER UNION AS BARGAINING AGENT OF THE SAID EMPLOYEES. THIS IS A PERMISSIBLE PROMOTION EXCEPT DURING THE QUIET PERIOD, VIZ. DECEMBER 2ND, 3RD, 4TH, AND 5TH.

9. DURING THIS QUIET PERIOD, THE SAME RADIO STATION, CHYM, MADE NOT LESS THAN FOUR (4) NEWS BROADCASTS ABOUT THE TWO WAY VOTE TO BE HELD ON TUESDAY, DECEMBER 5TH AMONGST THE 1100 EMPLOYEES OF THE RESPONDENT.

10. THE TWO (2) BROADCASTS ON SUNDAY, DECEMBER 3RD, AND THE ONE (1) OR MORE BROADCASTS ON TUESDAY, DECEMBER 5TH, REFERRED TO THE INTERVENER AS A "COMPANY UNION". IN UNION PARLANCE, THIS MEANS A PSEUDO UNION DOMINATED BY THE EMPLOYER AND THEREFORE NOT ABLE TO ACT INDEPENDENTLY AND IN THE BEST INTERESTS OF THE EMPLOYEES. AS THE INTERVENER UNION WAS CERTIFIED AS BARGAINING AGENT BY THIS BOARD ON MAY 20TH, 1952, I CAN ONLY CONCLUDE THAT THE BROADCASTS WERE DELIBERATELY INTENDED TO REFER TO THE INTERVENER UNION IN A DEROGATORY MANNER SO AS TO INFLUENCE THE EMPLOYEES TO VOTE FOR THE APPLICANT UNION. THE BROADCASTS ON DECEMBER 3RD INDICATED THAT THE UAW IS EXPECTED TO HAVE NO DIFFICULTY IN WINNING THE WORKERS OVER. AGAIN, THE WORDING APPEARS TO BE DELIBERATELY SLANTED AND BIASED IN FAVOUR OF THE APPLICANT UNION.

11. IF THE NEWSCASTS HAD BEEN CONFINED TO ONE ANNOUNCEMENT ON DECEMBER 3RD, I WOULD ACCEPT IT AS A REGULAR NEWSCAST. BUT WHEN CHYM GOES OUT OF ITS WAY TO MAKE FOUR (4) OR MORE BROADCASTS IN THREE (3) DAYS, I CANNOT ACCEPT IT AS SUCH. NO NORMAL VOTE DIRECTED BY THIS BOARD IS SUCH AN IMPORTANT NEWS ITEM AS TO WARRANT THIS REPETITION. IN MY OPINION, THESE BROADCASTS WERE DELIBERATELY INTENDED AND WORDED BY THE CHYM NEWSCASTER TO CREATE AN ATMOSPHERE THAT WOULD BE FAVOURABLE TO THE APPLICANT AND THEREBY GAIN THE SUPPORT OF THE

EMPLOYEES CONCERNED. THE EVIDENCE IS CLEAR THAT THE APPLICANT UNION TOOK NO STEPS WHATSOEVER TO INFORM THE RADIO STATION CHYM OF THE REGISTRAR'S DIRECTION FORBIDDING PROPAGANDA AND ELECTIONEERING ON DECEMBER 2ND, 3RD, 4TH, AND 5TH.

12. I CAN ONLY CONCLUDE FROM THE EVIDENCE THAT RADIO STATION CHYM MADE ITSELF A SELF-APPOINTED INTERESTED PERSON BY REWRITING AND MAKING THESE NEWSCASTS AND THEREBY BROUGHT ITSELF WITHIN THE CONFINES OF THE REGISTRAR'S DIRECTION FORBIDDING PROPAGANDA AND ELECTIONEERING DURING THE QUIET PERIOD. THE NUMBER OF THESE BROADCASTS WERE OUT OF ALL PROPORTION TO THE IMPORTANCE OF THE VOTE AS A NEWS ITEM. THE THOUSANDS OF LISTENERS TO CHYM, WHO HAD NO DIRECT CONNECTION WITH THE VOTE, WOULD NOT BE INTERESTED IN HEARING REPEAT BROADCASTS ABOUT IT. AS THE APPLICANT UNION MADE NO EFFORT TO RESTRAIN CHYM IN MAKING THESE BROADCASTS, I AM OBLIGED TO FIND THAT IT WAS PREPARED TO PERMIT TO BE DONE INDIRECTLY WHAT IT COULD NOT DO DIRECTLY BECAUSE OF THE REGISTRAR'S DIRECTION. ON THE OTHER HAND, THE INTERVENER UNION WAS EFFECTIVELY MUZZLED BY THE REGISTRAR'S DIRECTION AND COULD NOT INITIATE NEWS BROADCASTS OR OTHER ELECTIONEERING OR PROPAGANDA DURING THE SAME PERIOD. IF SUCH BROADCASTS ARE TO BE ALLOWED DURING THE QUIET PERIOD, THE REGISTRAR'S DIRECTION IS MEANINGLESS AND UNFAIR TO THE OTHER PARTIES AND SHOULD BE DISCONTINUED.

13. FOR THESE REASONS, I WOULD HAVE REVOKED THE DIRECTION FOR TAKING THE PREVIOUS PRE-HEARING VOTE AND DIRECTED THAT A NEW VOTE BE TAKEN.

13916-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ESSEX HEALTH ASSOCIATION (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 210 (INTERVENER #1) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 102 (INTERVENER #2).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT HEARING: T. ARMSTRONG AND A. RISELEY FOR THE APPLICANT, WALTER L. MCGREGOR, Q.C., AND B. W. PAULIN FOR THE RESPONDENT, MARTIN LEVISON FOR INTERVENER #1, AND #1, AND NO-ONE APPEARING FOR INTERVENER #2.

DECISION OF THE BOARD: JANUARY 9, 1968.

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2. THIS IS AN APPLICATION FOR CERTIFICATION MADE ON NOVEMBER 20TH, 1967. THE APPLICANT SEEKS TO REPRESENT ALL EMPLOYEES OF THE RESPONDENT WITH THE EXCEPTION OF, AMONG OTHER EMPLOYEES NOT HERE RELEVANT, EMPLOYEES COVERED BY A COLLECTIVE AGREEMENT BETWEEN

THE RESPONDENT AND BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 210, AND THOSE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF OPERATING ENGINEERS LOCAL 102. THE UNIT SOUGHT BY THE APPLICANT COMPRISES 67 REGISTERED NURSING ASSISTANTS AND EIGHT OTHER EMPLOYEES.

3. IT IS THE CONTENTION OF BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 210 (HEREINAFTER REFERRED TO AS "BUILDING SERVICE") THAT THE COLLECTIVE AGREEMENT MADE BETWEEN IT AND THE RESPONDENT, TOGETHER WITH A WRITTEN AGREEMENT MADE ON THE 15TH OF NOVEMBER, 1967, IS A BAR TO THE INCLUSION IN THE PROPOSED BARGAINING UNIT OF THE REGISTERED NURSING ASSISTANTS. THE RESPONDENT SUPPORTS THE ARGUMENT OF BUILDING SERVICE IN THIS MATTER.

4. THE AGREEMENT IN QUESTION IS DATED THE 10TH DAY OF MARCH, 1966, AND IS EFFECTIVE FROM THE 1ST DAY OF JANUARY, 1966, UP TO THE 31ST DAY OF DECEMBER, 1967, AND THEREAFTER UNTIL A NEW AGREEMENT IS REACHED. THE SCOPE CLAUSE OF THE AGREEMENT READS AS FOLLOWS:

"WHEREAS THE LABOUR RELATIONS BOARD OF ONTARIO HAS BY CERTIFICATE DATED THE 21ST DAY OF JULY, 1948, ESTABLISHED THAT THE EMPLOYEES IN THE FOLLOWING OCCUPATIONAL CLASSIFICATIONS, NAMELY:

KITCHEN AND CAFETERIA HELP
MAIDS
WARD AIDES
LINEN ROOM HELP
LAUNDRY HELP
MAINTENANCE HELP
ORDERLIES
PAINTERS
GARDENERS
CARPENTERS
CLEANERS
NURSES' AIDES

CONSTITUTE A UNIT OF THE EMPLOYEES OF THE EMPLOYER APPROPRIATE FOR COLLECTIVE BARGAINING PURPOSES, AND WHEREAS IT HAS BEEN MUTUALLY AGREED BY THE PARTIES HERETO THAT THE WORDS 'PORTERS' AND 'JANITORS' SHALL BE SUBSTITUTED FOR THE WORD 'CLEANER' IN THE ABOVE CLASSIFICATIONS AND THOSE EMPLOYEES FORMERLY CLASSIFIED AS 'CLEANERS' SHALL NOW BE CLASSIFIED AS 'PORTERS' AND 'JANITORS'."

NEGOTIATIONS FOR THE RENEWAL OF THIS AGREEMENT COMMENCED ON OCTOBER 31ST, 1967 AND THEY ARE STILL UNCOMPLETED. THE AGREEMENT OF NOVEMBER 15TH, 1967, HEREINAFTER CALLED THE "AMENDMENT", READS AS FOLLOWS:

"THIS WILL CONFIRM THAT ESSEX HEALTH ASSOCIATION RECOGNIZES BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AS THE SOLE COLLECTIVE BARGAINING AGENCY FOR REGISTERED NURSING ASSISTANTS EMPLOYED BY THE ASSOCIATION AND THE EXISTING CONTRACT BETWEEN THE ASSOCIATION AND THE SAID UNION IS HEREBY AMENDED BY ADDING TO THE EMPLOYEE CLASSIFICATIONS INCLUDED IN THE CERTIFICATE OF THE ONTARIO LABOUR RELATIONS BOARD, DATED 21ST JULY, 1948, THE CLASSIFICATION 'REGISTERED NURSING ASSISTANTS'. THE ADDITION OF REGISTERED NURSING ASSISTANTS TO THE EMPLOYEE CLASSIFICATIONS FOR WHICH THE UNION IS RECOGNIZED AS THE SOLE COLLECTIVE BARGAINING AGENCY IS SUBJECT TO AGREEMENT BY THE SAID UNION THAT

- A) REGISTERED NURSING ASSISTANTS PRESENTLY EMPLOYED BY THE ASSOCIATION ON THE DATE HEREOF WILL NOT BE REQUIRED AS A CONDITION OF THE CONTINUATION OF THEIR EMPLOYMENT TO JOIN THE UNION NOR WILL THEY BE COMPELLED TO HAVE UNION DUES DEDUCTED FROM THEIR WAGES, UNLESS ANY SUCH EMPLOYEE OR EMPLOYEES VOLUNTARILY ELECT IN WRITING TO DO SO. IN THE EVENT THAT SUCH ELECTION IS MADE BY AN EMPLOYEE, SUCH ELECTION SHALL BE IRREVOCABLE DURING THE TERM OF THE EXISTING AGREEMENT WITH THE UNION SUBJECT TO THE PROVISIONS OF ARTICLE 4, SECTION 4.04 OF THE EXISTING AGREEMENT.
- B) ALL NEW REGISTERED NURSING ASSISTANTS HIRED BY THE ASSOCIATION ON AND AFTER NOVEMBER 16, 1967 SHALL UPON COMPLETION OF THEIR PROBATIONARY PERIOD BE REQUIRED, AS A CONDITION OF THEIR EMPLOYMENT, TO AUTHORIZE DEDUCTION OF UNION MEMBERSHIP DUES FROM THEIR MONTHLY WAGES PURSUANT TO ARTICLE 4, SECTION 4.01 OF THE EXISTING CONTRACT.

DATED AT WINDSOR, ONTARIO THIS 15TH DAY OF NOVEMBER, 1967

ESSEX HEALTH ASSOCIATION

PER DAVID R. BROWN
MEDICAL SUPERINTENDENT

G. E. PICKARD
ASSISTANT ADMINISTRATOR

BUILDING SERVICE EMPLOYEES'

BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION,
LOCAL 210, HEREBY AGREES TO ACCEPT THE ADDITION OF
REGISTERED NURSING ASSISTANTS TO THE EMPLOYEE
CLASSIFICATIONS FOR WHICH IT WILL ACT AS THE SOLE
COLLECTIVE BARGAINING AGENCY UPON THE TERMS AND
CONDITIONS SET OUT ABOVE.

DATED AT WINDSOR, ONTARIO THIS 15TH DAY OF NOVEMBER, 1967

BUILDING SERVICE EMPLOYEES'
INTERNATIONAL UNION, LOCAL 210

PER ANTHONY BORG
PRESIDENT

MATILDA SMITH.
COMMITTEE MEMBER

VERA FIGLIOLA
COMMITTEE MEMBER

F. MAGUIRE
CHIEF STEWARD"

5. THE APPLICANT TOOK THE POSITION THAT THE AGREEMENT AND THE DOCUMENT OF NOVEMBER 15TH DO NOT CONSTITUTE A BAR TO THE APPLICATION. THE ORIGINAL AGREEMENT OBVIOUSLY DID NOT INCLUDE THE REGISTERED NURSING ASSISTANTS IN ITS CATEGORIES OF EMPLOYEES SET OUT IN THE SCOPE CLAUSE. THE APPLICANT ARGUED THAT BECAUSE OF ALL THE CIRCUMSTANCES SURROUNDING THE EXECUTION OF THE AMENDMENT IT SHOULD NOT BE FOUND TO BE A BAR TO THE APPLICATION.

6. THERE WAS EVIDENCE THAT FOR A NUMBER OF YEARS DURING NEGOTIATIONS BUILDING SERVICE HAD SOUGHT TO HAVE THE RESPONDENT AGREE TO THE REGISTERED NURSING ASSISTANTS BEING INCLUDED IN THE BARGAINING UNIT. THE RESPONDENT HAD CONSISTENTLY REFUSED TO ADD THE CLASSIFICATION TO THE SCOPE CLAUSE. THE QUESTION WAS RAISED DURING THE CURRENT NEGOTIATIONS WHICH, AS NOTED, COMMENCED ON OCTOBER 31ST. THE EVIDENCE WAS THAT THE RESPONDENT INDICATED TO BUILDING SERVICE THAT IT HAD NO OBJECTION TO THE INCLUSION OF THE REGISTERED NURSING ASSISTANTS; BUT THAT IT COULD NOT MAKE A DECISION UNTIL AFTER THE DECISION OF THE ONTARIO LABOUR RELATIONS BOARD IN A PENDING APPLICATION MADE BY THE UNION OF NURSING ASSISTANTS FOR CERTIFICATION AS BARGAINING AGENT FOR ALL REGISTERED NURSING ASSISTANTS EMPLOYED BY THE RESPONDENT. THIS APPLICATION WAS DISMISSED BY THE BOARD ON NOVEMBER 8TH, 1967. THE RESPONDENT RECEIVED THE DECISION ON NOVEMBER 10TH, 1967.

7. ON NOVEMBER 16TH, 1967, THE BOARD CERTIFIED CANADIAN UNION OF PUBLIC EMPLOYEES AS BARGAINING AGENT FOR A TAG-END UNIT IN THE METROPOLITAN GENERAL HOSPITAL IN WINDSOR. THIS HOSPITAL IS NOT ONE

COMING UNDER THE RESPONDENT BUT BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 210 WAS AN INTERVENOR IN THAT APPLICATION ALSO. THE DECISION CONTAINS A CLARITY NOTE DECLARING THAT REGISTERED NURSING ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT.

8. ALTHOUGH THIS DECISION WAS NOT ISSUED UNTIL THE DAY FOLLOWING THE COMPLETION OF THE AMENDMENT, IT IS INCONCEIVABLE THAT THE RESPONDENT WOULD BE UNAWARE OF THAT APPLICATION, SINCE BUILDING SERVICE LOCAL 210, AS NOTED, WAS FULLY INVOLVED IN THE MATTER. THEY MAY ALSO BE REASONABLY ASSUMED TO HAVE ANTICIPATED THE RESULT BEFORE THE DECISION WAS ACTUALLY ISSUED.

9. ON NOVEMBER 15TH, 1967 - AT A TIME WHEN BOTH PARTIES WERE OBVIOUSLY AWARE OF THE DESIRE FOR UNION REPRESENTATION IN THE RANKS OF REGISTERED NURSING ASSISTANTS IN THE RESPONDENT'S OWN EMPLOY AND OF THE FORESEEABLY SUCCESSFUL APPLICATION OF THE APPLICANT HEREIN TO REPRESENT THAT CLASSIFICATION IN THE METROPOLITAN GENERAL HOSPITAL WHERE THEY FORMED A TAG-END TO BUILDING SERVICE'S UNIT, JUST AS THEY DO IN PART IN THE PRESENT CASE - THE RESPONDENT AND BUILDING SERVICE SIGNED THE AMENDMENT.

10. THIS AMENDMENT ON THE PART OF THE RESPONDENT REPRESENTED, IT MUST BE NOTED, A SUDDEN SURRENDER IN MID-COURSE OF CONTRACT NEGOTIATIONS OF A POSITION STRONGLY HELD BY IT THROUGH OUT PREVIOUS BARGAINING SESSIONS FOR PRIOR COLLECTIVE AGREEMENTS, NOT ONLY WAS THE SURRENDER SUDDEN, BUT UNLIKE ANY OTHER MATTER SETTLED BETWEEN THE PARTIES DURING THE NEGOTIATIONS, THIS ONE WAS PUT INTO WRITING AND SIGNED AS AN AMENDMENT TO THE AGREEMENT. THE CONDUCT OF THE PARTIES IS UNIQUE IN THIS RESPECT, AND CONSEQUENTLY COMPELS THE CONCLUSION THAT THE PURPOSE OF DRAFTING AND SIGNING THE AMENDMENT WAS NOT MERELY TO RECORD A NEGOTIATED AMENDMENT TO THE AGREEMENT WHICH NORMALLY ONE WOULD EXPECT TO FIND WRITTEN INTO THE AGREEMENT, TOGETHER WITH ALL OTHER AMENDMENTS, AT THE CONCLUSION OF THE NEGOTIATIONS RATHER THAN DURING THEM; BUT RATHER THE PROCEDURE FOLLOWED BY THE PARTIES WAS OBVIOUSLY ADOPTED IN THE LIGHT OF THEIR KNOWLEDGE OF THE ORGANIZATIONAL ACTIVITIES AMONG THE REGISTERED NURSING ASSISTANTS IN THE AREA.

11. IT IS OF PARAMOUNT IMPORTANCE TO NOTE THAT THROUGHOUT ALL THE TIME COVERED BY THE CIRCUMSTANCES REFERRED TO ABOVE AND UP UNTIL THE DATE OF THE HEARING, BUILDING SERVICE HAS NOT HAD ANY MEMBERSHIP WHATSOEVER AMONG THE REGISTERED NURSING ASSISTANTS WHOSE BARGAINING RIGHTS IT AND THE RESPONDENT DEALT WITH IN THE AMENDMENT.

12. IT WAS ARGUED BY THE APPLICANT THAT THE AMENDMENT AMOUNTED TO A COLLECTIVE AGREEMENT INsofar AS THE REGISTERED NURSING ASSISTANTS ARE CONCERNED AND THAT THEREFORE THE ONUS REFERRED TO IN SECTION 45A(3) LAY UPON THE PARTIES TO THE AMENDMENT.

13. ASSUMING THAT THE AMENDMENT CONSTITUTES A COLLECTIVE AGREEMENT, THE EVIDENCE IS CLEAR THAT THE TRADE UNION BUILDING SERVICE WAS NOT, AT THE TIME THE AGREEMENT OR AMENDMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT. BY REASON OF THE PROVISIONS OF SECTION 45A(4) OF THE ACT, THE AMENDMENT, CONSIDERED AS A COLLECTIVE AGREEMENT COULD NOT CONSTITUTE A BAR TO THE APPLICATION.
14. IN ANY EVENT, WE ARE PREPARED TO FIND, UPON THE BASIS OF ALL THE EVIDENCE OF THE CIRCUMSTANCES SURROUNDING THE MAKING OF THE AMENDMENT, THAT IT WAS CONCLUDED IN THE SHADOW OF AN ORGANIZATIONAL CAMPAIGN.
15. THE AMENDMENT, AS NOTED PREVIOUSLY, IS DATED NOVEMBER 15TH, 1967. THIS IS THE DATE UPON WHICH THE FIRST AND THE MAJORITY OF THE CARDS FILED BY THE APPLICANT WERE SIGNED. THE RESPONDENT AND BUILDING SERVICE ALLEGE THAT THEY WERE NOT AWARE OF THE APPLICANT'S CAMPAIGN, AND IF WE ACCEPT THAT EVIDENCE WE CAN ONLY CONCLUDE THAT THE HAPPENING OF THESE EVENTS UPON THE SAME DATE WAS COINCIDENTAL.
16. BE THAT AS IT MAY, AND TO REITERATE WHAT WAS SAID PREVIOUSLY, BOTH THE RESPONDENT AND BUILDING SERVICES MUST HAVE BEEN AWARE (THE INFERENCE IS INESCAPABLE) THAT THERE WAS ORGANIZATIONAL INTEREST AND ACTIVITY AMONG THE REGISTERED NURSING ASSISTANTS IN THIS AND AT LEAST ONE OTHER AREA HOSPITAL, AND THAT THE REGISTERED NURSING ASSISTANTS WERE SEEKING UNION ORGANIZATION AND REPRESENTATION. THE OBVIOUS AIR OF URGENCY THAT SURROUNDS THE SIGNING OF THE AMENDMENT LENDS CREDENCE, IF NOT COMPULSION, TO THE INFERENCE. IN ADDITION, THERE IS THE FACT THAT BUILDING SERVICE HAS NO MEMBERSHIP AMONG THE REGISTERED NURSING ASSISTANTS AND THAT THAT DOOR TO THE BARGAINING RIGHTS OF THE GROUP APPEARS TO HAVE BEEN SHUT TO IT. IT IS ALSO WORTH NOTING THAT THE AMENDMENT REFERRED ONLY TO THE REGISTERED NURSING ASSISTANTS AND DID NOT INCLUDE THE OTHER EMPLOYEES IN THE TAG-END UNIT SOUGHT BY THE APPLICANT.
17. IN THESE CIRCUMSTANCES WE DO NOT THINK IT MATTERS WHETHER THE AMENDMENT BE CONSIDERED AS AN AMENDMENT TO THE MAIN AGREEMENT OR AS AN AGREEMENT IN ITSELF. HAVING IN MIND THE REASONS UNDERLYING THE POLICY OF THE BOARD WITH RESPECT TO AGREEMENTS MADE IN THE SHADOW OF AN ORGANIZATIONAL DRIVE (CAPITAL CARBON AND RIBBON Co. LTD., 47 CLLC ¶16,479), WE DO NOT RECOGNIZE ANY VALID DISTINCTION BETWEEN A COLLECTIVE AGREEMENT 'IN TOTO' MADE IN THAT SHADOW AND WHAT PURPORTS TO BE AN AMENDMENT TO AN AGREEMENT WHERE THE RESULT IS THE SAME. IT IS WORTHWHILE OBSERVING THAT, IN THE CAPITAL CARBON CASE ABOVE CITED, THE BOARD WAS PREPARED TO REJECT THE AGREEMENT THEN UNDER CONSIDERATION "ALTOGETHER APART FROM THE QUESTION OF KNOWLEDGE TO BE IMPUTED TO THE RESPONDENT COMPANY" AND TO TAKE INTO ACCOUNT OTHER CIRCUMSTANCES AND CONSIDERATIONS IN DETERMINING THE VALIDITY OF THE AGREEMENT AS A BAR TO THE APPLICATION BEFORE IT.

18. FOR ALL OF THE FOREGOING REASONS, AND HAVING REGARD TO WHAT WE CONSIDER TO BE THE SPIRIT OF SECTION 45A OF THE ACT, THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND BUILDING SERVICE, DATED MARCH 10TH, 1966, AND THE AMENDMENT, DATED NOVEMBER 15TH, 1967, DO NOT CONSTITUTE A BAR TO THE APPLICATION HEREIN.

19. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

20. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, STUDENT NURSING ASSISTANTS, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 210 AND CANADIAN UNION OF OPERATING ENGINEERS LOCAL 102, RESPECTIVELY, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 20 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

21. FOR THE PURPOSES OF CLARITY THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT WARD CLERKS ARE INCLUDED IN THE TERM "OFFICE STAFF" AND ARE EXCLUDED FROM THE BARGAINING UNIT.

22. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 28TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

23. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

13922-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CANADIAN CHROMALOX COMPANY (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT HEARING: ROBERT WHITE AND BRUCE LEE FOR THE APPLICANT, AND GEORGE FERGUSON, Q.C., AND W.H. DEVITT FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: JANUARY 3, 1968.

4. COUNSEL FOR THE RESPONDENT SUBMITTED THAT IN THIS CASE THE BOARD SHOULD NOT FOLLOW THE PRACTICE USUALLY PURSUED IN SIMILAR APPLICATION WITH RESPECT TO THE GEOGRAPHIC LIMITATIONS SET OUT IN THE DESCRIPTION OF THE BARGAINING UNIT. HE SUGGESTED THAT THE UNIT SHOULD BE DESCRIBED AS ENCOMPASSING ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT REXDALE RATHER THAN THE CUSTOMARY PHRASE "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO". THE REASONS GIVEN AS UNDERLYING THE REQUEST ARE THAT THE PRESENT PLANT IS A SELF-CONTAINED UNIT WHICH DOES NOT LEND ITSELF TO EXPANSION, AND THAT THE RESPONDENT ANTICIPATES THE BUILDING OF ANOTHER PLANT IN THE METROPOLITAN AREA. IT WAS SUBMITTED THAT THIS PLANT WOULD NOT BE ON THE PROPERTY WHERE THE PRESENT PLANT STANDS, AND THAT ITS PRODUCTS WOULD HAVE NO RELATIONSHIP TO THOSE PRESENTLY MADE NOR WOULD THERE BE ANY INTERCHANGE. THE RESPONDENT ALSO UNDERTOOK TO GIVE A GUARANTEE THAT IT WOULD RECOGNIZE CONTINUING BARGAINING RIGHTS SHOULD THE PRESENT OPERATIONS BE MOVED.

5. IF THERE HAD BEEN CONCRETE EVIDENCE INDICATING THE PROPOSED PLANT WAS REASONABLY CLOSE TO COMPLETION AND WOULD EMBODY ALL ELEMENTS OUTLINED BY THE RESPONDENT, THE BOARD WOULD, NO DOUBT, HAVE GIVEN SERIOUS CONSIDERATION TO TREATING THE MATTER AS IT WOULD IN THE CASE OF TWO OPERATING PLANTS OF THE SAME RESPONDENT IN THE SAME GEOGRAPHIC AREA. IN THE ABSENCE OF SUCH EVIDENCE WE DO NOT PROPOSE TO DEPART FROM THE USUAL PRACTICE IN SUCH MATTERS.

6. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, LABORATORY TECHNICIANS, MODEL ROOM TECHNICIANS, EMPLOYEES IN THE ENGINEERING DEPARTMENT, REGISTERED NURSE, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE FURTHER AGREEMENT OF THE PARTIES THAT QUALITY CONTROL INSPECTORS ARE INCLUDED IN THE BARGAINING UNIT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 28TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON:

JANUARY 3, 1968.

I DISSENT. IN THE CIRCUMSTANCES I WOULD HAVE CONFINED THE GEOGRAPHIC AREA SET OUT IN THE DESCRIPTION OF THE BARGAINING UNIT TO THE RESPONDENT'S PLANT AT REXDALE.

13951-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INSPIRATION LIMITED, MINING SERVICES DIVISION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: EAMON PARK, G. REEDS, MAURICE LABROSSE FOR THE APPLICANT, B.H. STEWART, B. SARRAZIN, C. GRABER, FOR THE RESPONDENT AND W. WINDSOR, GORDON BURKE FOR THE GROUP OF EMPLOYEES.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER O. HODGES. JANUARY 19, 1968.

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3. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY SAVE AND EXCEPT PLANT ENGINEER, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR THE PURPOSES OF CLARITY IN THE INSTANT CASE, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT DRILLERS AND DRILLERS HELPERS ARE NOT INCLUDED IN THE BARGAINING UNIT.

5. ON DECEMBER 8TH, 1967, THE RESPONDENT FILED WITH THE BOARD A LIST OF 10 EMPLOYEES ON SCHEDULE A. SUBSEQUENTLY ON DECEMBER 12TH, IT FILED AN ADDITIONAL LIST OF 25 EMPLOYEES, 23 ON SCHEDULE A AND 2 ON SCHEDULE D. THE BOARD FINDS THAT H. COUCHIE WHOSE NAME APPEARS ON SCHEDULE A IS NOT AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT AND BY AGREEMENT OF THE PARTIES R. MALES WHOSE NAME APPEARS ON SCHEDULE D IS NOT AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT. THE RESPONDENT AT THE HEARING ADMITTED THAT ALTHOUGH IT HAD RECENTLY ACQUIRED BOYLES INDUSTRIES LIMITED IN NORTH BAY AND THAT THERE ARE TWO CORPORATE ENTITIES IN EXISTENCE, IN FACT, THOSE PERSONS INCLUDED IN THE DESCRIPTION OF THE BARGAINING UNIT ABOVE WORKING AT THE PLANT OF BOYLES INDUSTRIES LIMITED ARE EMPLOYEES OF THE RESPONDENT. THE BOARD FINDS THAT ADEQUATE NOTICE OF THE APPLICATION WAS GIVEN TO THE EMPLOYEES AFFECTED AS THE BOARD RECEIVED A DOCUMENT IN OPPOSITION TO THE APPLICATION FROM CERTAIN PERSONS WHO INDICATED ON IT THAT THEY WERE EMPLOYEES OF BOYLES INDUSTRIES LIMITED AND FURTHER THERE WAS

EVIDENCE GIVEN TO THE BOARD AT THE HEARING THAT NOTICES WERE POSTED ON THE TIME CLOCK AND IN THE COFFEE ROOM USED BY MOST OF THE EMPLOYEES. IN THE CIRCUMSTANCES THEREFORE, THE BOARD FINDS THAT THERE WERE 33 EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE. OF THESE EMPLOYEES, THE APPLICANT CLAIMED 22 AS MEMBERS.

6. THERE WERE FILED IN THIS MATTER TWO DOCUMENTS IN OPPOSITION TO THIS APPLICATION BOTH DATED AT NORTH BAY, DECEMBER 6TH, 1967, ONE HEADED, "WE THE EMPLOYEES OF BOYLES INDUSTRIES LIMITED IN NORTH BAY OPPOSE THE APPLICATION FOR CERTIFICATION BY THE UNITED STEELWORKERS OF AMERICA"; FOLLOWED BY 7 SIGNATURES AND THE OTHER HEADED, "WE THE EMPLOYEES OF INSPIRATION LIMITED, MINING SERVICES DIVISION IN NORTH BAY OPPOSE THE APPLICATION FOR CERTIFICATION BY THE UNITED STEELWORKERS OF AMERICA"; FOLLOWED BY 10 SIGNATURES. FIFTEEN OF THE PERSONS WHO SIGNED THE DOCUMENTS ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND OF THOSE THE APPLICANT CLAIMED 5 AS MEMBERS. BOTH DOCUMENTS WERE ATTACHED TO A LETTER ADDRESSED TO THE REGISTRAR OF THE BOARD, DATED DECEMBER 8TH, 1967, SIGNED BY MR. WM. WINDSOR, IN ACCORDANCE WITH THE FACTS OUTLINED ABOVE THE BOARD AT THE HEARING DEALT WITH THESE DOCUMENTS AS BEING ONE PETITION IN OPPOSITION TO THE INSTANT APPLICATION. THE BOARD ACCORDINGLY MADE INQUIRIES AS TO THE ORIGINATION AND CIRCULATION OF THE PETITION.

7. WILLIAM WINDSOR, AN EMPLOYEE OF THE RESPONDENT FOR ABOUT 18 YEARS, TOLD THE BOARD THAT HE IS A LEAD HAND AND AS WELL, IN HIS CAPACITY, HAS BEEN DOING PART OF A FOREMAN'S WORK FOR 3 OR 4 YEARS. HE TESTIFIED THAT AFTER NOTICE OF THE APPLICATION WAS POSTED ON DECEMBER 4TH, HE LEFT HIS WORK STATION AND WENT TO THE PLANT OFFICE AT ABOUT 10.30 A.M. AND AFTER REQUESTING ASSISTANCE FROM THE MANAGER WHO TOLD HIM THAT HE COULD NOT HELP, HE THEN ASKED ONE OF THE GIRLS IN THE OFFICE TO TYPE A LIST FOR HIM WHICH SHE DID. IT APPEARS FROM HIS EVIDENCE THAT SOMETIME LATER HE DISCUSSED THE WORDING WITH A GIRL IN THE GENERAL OFFICE WHO LOOKED AFTER THE PAYROLL, THEN ASKED FOR A LIST OF EMPLOYEES BOTH FOR INSPIRATION LIMITED AND BOYLES INDUSTRIES LIMITED, AND THEN HAD THE DOCUMENTS RETYPED ON DECEMBER 6TH BY THE SAME GIRL THAT TYPED THE FIRST DOCUMENT. ALL OF THIS WAS DONE ON THE RESPONDENT'S PREMISES DURING WORKING HOURS. MR. WINDSOR TOOK ONE DOCUMENT TO THE WAREHOUSE AFTER LUNCH DURING WORKING HOURS, WITHOUT FIRST ATTAINING PERMISSION TO DO SO AND OBTAINED THE SIGNATURES APPEARING ON THE SHEET CONTAINING 10 SIGNATURES. THE OTHER ONE HE TOOK TO THE MACHINE SHOP LATER THAT AFTERNOON AND AFTER REQUESTING THE SUPERVISOR TO "HELP THRASH OUT THE EMPLOYEE PROBLEMS" A MEETING WAS HELD BY THE EMPLOYEES DURING THEIR COFFEE BREAK WHICH LASTED OVER 3/4 OF AN HOUR. HE THEN OBTAINED THE BALANCE OF THE SIGNATURES. HE TESTIFIED THAT THE SUPERVISOR WAS NOT PRESENT AT THAT MEETING. MR. WINDSOR WITNESSED EACH SIGNATURE ON THE PETITION. HE THEN REQUESTED THE MAIL CLERK TO MAIL THE DOCUMENTS TO THE BOARD.

8. IN DEALING WITH PETITIONS PRESENTED IN OPPOSITION TO THE APPLICATION FOR CERTIFICATION, THE BOARD MUST BE SATISFIED THAT THE TRUE WISHES OF THE EMPLOYEES ARE DISCLOSED CONCERNING THE REPRESENTA-

TION OF THE APPLICANT UNION. IN THIS CASE THE EMPLOYEE ON MORE THAN ONE OCCASION LEFT HIS WORK STATION DURING WORKING HOURS, HAD A PETITION PREPARED IN THE PLANT OFFICE BY ANOTHER EMPLOYEE IN THAT OFFICE AND SUBSEQUENTLY QUITE OPENLY CIRCULATED THE PETITION AND OBTAINED SIGNATURES IN THE PLANT DURING WORKING HOURS. IT IS OBVIOUS THAT HE WAS NOT CONCERNED THAT HIS ACTIVITIES WOULD DISPLEASE MANAGEMENT. FURTHER, IN THE CIRCUMSTANCES AND HAVING REGARD TO HIS APPARENT, IF NOT ACTUAL AUTHORITY IN THE PLANT, IT IS LOGICAL TO INFER THAT OTHER EMPLOYEES WOULD CONCLUDE THAT HE HAD AT LEAST THE TACIT APPROVAL OF MANAGEMENT FOR HIS ACTIONS AND THEREFORE BE UNDULY INFLUENCED IN THE MATTER.

9. HAVING REGARD TO ALL THE EVIDENCE THE BOARD IS NOT PREPARED TO ACCEPT THE PETITION AS REPRESENTING THE VOLUNTARY DESIRES OF THE EMPLOYEES CONCERNED. THE BOARD THEREFORE FINDS THAT THE PETITION DOES NOT WEAKEN OR QUALIFY ANY OF THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO REQUIRE THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 8TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN:

JANUARY 19, 1968.

1. I DISSENT.

2. WILLIAM WINDSOR IS EMPLOYED BY THE RESPONDENT AS A LEAD HAND. HE IS HOURLY RATED AND IS AN EXPERIENCED MECHANIC IN THE REPAIR OF MINING MACHINERY. WHEN REQUIRED, HE ASSISTED OTHER EMPLOYEES WITH DIFFICULT REPAIR JOBS. HE HAS NO MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. HE IS INCLUDED IN THE BARGAINING UNIT DETERMINED BY THE BOARD.

3. WINDSOR READ FORM 5 AND DECIDED TO OPPOSE THE APPLICATION FOR CERTIFICATION. HE REQUESTED THE ASSISTANCE OF THE MANAGER IN MAKING UP THE PREAMBLE OF THE PETITION IN OPPOSITION TO THE UNION. THE MANAGER INFORMED WINDSOR THAT HE COULD NOT HELP HIM. HE THEN ASKED ASSISTANCE FROM A GIRL IN THE OFFICE WHO MAKES UP THE PAYROLL. THERE IS NO SUGGESTION THAT THIS GIRL HAS MANAGERIAL FUNCTIONS OR IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. GENERALLY SPEAKING, THE BOARD HAS HELD THAT PAYROLL CLERKS AND BOOKKEEPERS ARE INCLUDED IN THE BARGAINING UNIT. IT

CAN'T BE FOUND, THEREFORE, THAT ANY ASSISTANCE SHE MAY HAVE GIVEN WINDSOR WAS MANAGERIAL. SHE IS ENTITLED TO EXERCISE HER RIGHTS AS AN EMPLOYEE UNDER THE LABOUR RELATIONS ACT.

4. WINDSOR FURTHER TESTIFIED THAT HIS WORK TOOK HIM TO EVERY PART OF THE PLANT INCLUDING THE MACHINE SHOP. IT IS NOT A VIOLATION UNDER THE ACT TO ATTEMPT TO PERSUADE EMPLOYEES AT THEIR PLACE OF EMPLOYMENT DURING WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION SO LONG AS IT IS DONE WITHOUT THE KNOWLEDGE OR APPROVAL OF MANAGEMENT OR IN THE PRESENCE OF MANAGEMENT. WINDSOR DID NOT ASK SUCH APPROVAL AND HE TESTIFIED THAT NO FOREMAN WAS PRESENT WHEN THE EMPLOYEES SIGNED THE PETITION. WHEN HIS ACTIONS CAME TO THE ATTENTION OF THE FOREMAN, WINDSOR WAS INSTRUCTED TO RETURN TO HIS WORK STATION. HE STATED THAT UNION CARDS HAD ALSO BEEN SIGNED BY EMPLOYEES DURING WORKING HOURS AND ON THE PREMISES OF THE COMPANY.

5. NONE OF THE EMPLOYEES, WHO SIGNED THE PETITION, HAVE INFORMED THE BOARD THAT THEIR SIGNATURES THEREON DID NOT REPRESENT A VOLUNTARY SIGNIFICATION OF THEIR OPPOSITION TO THE UNION.

6. FOR THESE REASONS, I WOULD HAVE GIVEN WEIGHT TO THE PETITION. AS THIS WOULD REDUCE THE UNION'S UNCHALLENGED MEMBERSHIP TO NOT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT, I WOULD HAVE DIRECTED THE TAKING OF A REPRESENTATION VOTE. THE EMPLOYEES WOULD BE ASKED IF THEY WISHED TO BARGAIN COLLECTIVELY WITH THEIR EMPLOYER THROUGH THE APPLICANT UNION.

13957-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. RON ENGINEERING AND CONSTRUCTION LIMITED (RESPONDENT).

BEFORE G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 15, 1968.

1. THE APPLICANT FILED 13 CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES ARE SIGNED BY THE MEMBERS AND INDICATE THAT MONTHLY DUES OF \$4.00 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATES ARE CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE APPLICANT ALSO FILED 6 COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTER-SIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

2. THE RESPONDENT FILED A REPLY, INCLUDING A LIST AND SPECIMEN SIGNATURES, WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE.

3. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. IN A RECENT DECISION OF THE BOARD, CITY CONCRETE FORMING LTD., BOARD FILE NO. 13693-67-R, DATED DECEMBER 18TH, 1967, THE BOARD INDICATED THAT IT PROPOSED TO INCLUDE MARLBOROUGH TOWNSHIP IN BOARD AREA NO. 15. ACCORDINGLY, THE BOARD THEREFORE FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE APPLICANT CHALLENGED THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. ACCORDINGLY, AN EXAMINER WAS APPOINTED TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. THE REPORT OF THE EXAMINER WAS RELEASED TO THE PARTIES BY LETTER DATED DECEMBER 22ND, 1967. THE PARTIES INDICATED THAT THEY DID NOT WISH A HEARING IN CONNECTION WITH THE REPORT BUT, INSTEAD, SUBMITTED THEIR REPRESENTATIONS IN CONNECTION THEREWITH IN WRITING TO THE BOARD. THE BOARD HAS NOW HAD AN OPPORTUNITY TO CONSIDER THE SAID REPORT AND THE REPRESENTATIONS OF THE PARTIES AS CONTAINED IN THEIR WRITTEN SUBMISSIONS DATED DECEMBER 29TH, 1967, JANUARY 3RD, 1968 AND JANUARY 8TH, 1968.

7. ON THE BASIS OF ALL THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD MAKES THE FOLLOWING FINDINGS:

- (1) THAT R. TYSICK AND BRUNO VERSOLATTO WERE NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION, NAMELY, DECEMBER 1ST, 1967, AND, ACCORDINGLY, ARE NOT INCLUDED IN THE BARGAINING UNIT FOR THE PURPOSES OF THE COUNT. SEE CARL J. LEHMAN & SONS LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 615.
- (2) THAT CLEMENT GOYETTE AND G. LACASSE ARE LABOURERS AND WERE SO ENGAGED ON THE DATE OF THE MAKING OF THE APPLICATION AND, ACCORDINGLY, ARE INCLUDED IN THE BARGAINING UNIT. IN THE CASE OF MR. LACASSE, THERE IS NO SUGGESTION THAT HE HAS BEEN ENGAGED AS AN OPERATOR ON THE PRESENT JOB.

(3) THAT LUIGI TREMMAGLIA DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS ACCORDINGLY INCLUDED IN THE BARGAINING UNIT. IN THIS CONNECTION WE POINT OUT THAT MR. L. TREMMAGLIA DOES NOT HAVE DUTIES AND RESPONSIBILITIES OF PERSONS SUCH AS BRANDNER IN THE SOVEREIGN CONSTRUCTION COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 24, OR BILL AND CHARRON IN THE UNI-FORM BUILDERS LTD. CASE, O.L.R.B. MONTHLY REPORT, MARCH 1967, P. 1019, OR WILHELM IN THE PRE-CON MURRAY LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1965, P. 328. RATHER, IT IS OUR VIEW THAT MR. TREMMAGLIA'S DUTIES ARE MORE AKIN TO THOSE OF FALCONE IN THE SOVEREIGN CONSTRUCTION LIMITED CASE, SUPRA. SEE ALSO SIL-JOE HOLDINGS LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1967, P. 304.

(4) THAT D. DWINELL WAS AT WORK ON DECEMBER 1ST AND ACCORDINGLY IS INCLUDED IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT. WE WISH TO EMPHASIZE THAT THIS FINDING IS BASED ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER. ON THE BASIS OF THAT EVIDENCE WE ARE UNABLE TO DRAW THE INFERENCE SUGGESTED BY THE APPLICANT'S REPRESENTATIVE.

8. AS NOTED ABOVE, THE LIST OF EMPLOYEES IS DETERMINED BY REFERENCE TO THOSE EMPLOYEES ACTUALLY AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. IN A LETTER TO THE BOARD DATED DECEMBER 11TH, 1967 THE APPLICANT REQUESTED THAT WE TAKE INTO CONSIDERATION CERTAIN MEMBERSHIP EVIDENCE (SEVEN CERTIFICATES OF MEMBERSHIP) SUBMITTED FOR PERSONS "WHO WERE ONCE WORKING FOR THE RESPONDENT". ONLY ONE OF THE SEVEN PERSONS FOR WHOM THE CERTIFICATES WERE FILED WAS AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION AND, IN ACCORDANCE WITH THE ABOVE STATED POLICY, ONLY ONE OF THE SAID SEVEN CERTIFICATES OF MEMBERSHIP WOULD BE TAKEN INTO CONSIDERATION IN THIS CASE.

9. HAVING REGARD TO ALL THE ABOVE CONSIDERATIONS, THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE 25 EMPLOYEES IN THE BARGAINING UNIT. 13 OF THE NAMES APPEARING ON THE 13 CERTIFICATES OF MEMBERSHIP AND 6 COMBINATION APPLICATIONS AND RECEIPTS FILED BY THE APPLICANT CORRESPOND TO THE 25 NAMES OF THE PERSONS IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 11TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR

RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. THE APPLICANT HAS ASKED THE BOARD TO APPLY SUBSECTION 5 OF SECTION 7 OF THE LABOUR RELATIONS ACT AND CERTIFY THE APPLICANT ON THE GROUND THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE "DUE TO A RECENT CONSIDERABLE LAY-OFF". THE BOARD HAS NEVER CONSIDERED SUCH A REQUEST AS COMING WITHIN THE PROVISIONS OF SECTION 7(5) AND DOES NOT PROPOSE TO DO SO IN THE PRESENT CASE. IN ANY EVENT, IT IS THE WISHES OF THE EMPLOYEES ELIGIBLE TO VOTE AS OF THE DATE OF THIS DECISION, AND NOT AS OF THE DATE OF THE MAKING OF THE APPLICATION, WHICH MUST BE CONSIDERED IN DETERMINING WHETHER SECTION 7(5) HAS ANY APPLICATION. THERE IS NO EVIDENCE TO SUGGEST THAT THESE EMPLOYEES' WISHES WOULD NOT BE PROPERLY DISCLOSED BY A REPRESENTATION VOTE.

12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

13964-67-R: THE CIVIL SERVICE ASSOCIATION OF ONTARIO (INC.)
(APPLICANT) v. VERSAFOOD SERVICES LIMITED INSTITUTIONS DIVISION
UNIVERSITY OF GUELPH (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: G. JONES FOR THE APPLICANT,
B.M.W. PAULIN, Q.C., FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 30, 1968.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT COMPOSED OF ALL OF ITS EMPLOYEES AT THE UNIVERSITY OF GUELPH SAVE AND EXCEPT MANAGERIAL AND CERTAIN OTHER SPECIFIED OCCUPATIONAL CLASSIFICATIONS.

4. IN SUPPORT OF ITS APPLICATION THE APPLICANT FILED WITH THE BOARD A COPY OF A RESOLUTION WHICH WAS ADOPTED BY THE BOARD OF DIRECTORS OF THE APPLICANT ON JULY 17TH, 1967, WHICH AMENDED SECTION 3(A) OF BY-LAW 65 OF THE ASSOCIATION. THE BY-LAW, AS AMENDED, WAS DULY RATIFIED BY THE DELEGATES OF THE 1967 ANNUAL GENERAL MEETING OF THE ASSOCIATION ON NOVEMBER 15TH, 1967, IN ACCORDANCE WITH THE PROCEDURE ESTABLISHED IN ARTICLE 7 OF THE BY-LAW 65. SECTION 3(A) OF BY-LAW 65, AS AMENDED, READS:

3. MEMBERSHIP:

(A) ELIGIBILITY -

(1) ANY PERSON EMPLOYED BY THE CROWN IN THE RIGHT OF ONTARIO OR BY ANY PUBLIC AUTHORITY OR EMPLOYED WITHIN ANY INSTITUTION SITUATE IN THE PROVINCE OF ONTARIO WHO SIGNS AN APPLICATION FOR MEMBERSHIP IN THE FORM APPROVED BY THE BOARD OF DIRECTORS SHALL BE ELIGIBLE FOR AND SHALL BE ADMITTED TO MEMBERSHIP IN THE ASSOCIATION AT THE DISCRETION OF THE BOARD OF DIRECTORS. ACCEPTANCE OF AN APPLICATION FOR MEMBERSHIP SHALL BE DEEMED TO INDICATE THAT THE PERSON WHOSE APPLICATION IS ACCEPTED IS SUBJECT TO THE BY-LAW AND REGULATIONS OF THE ASSOCIATION. A MEMBERSHIP CARD SHALL BE FORWARDED TO EACH MEMBER CERTIFYING HIS MEMBERSHIP IN THE ASSOCIATION.

5. COUNSEL FOR THE RESPONDENT SUBMITS THAT SECTION 3(A) OF BY-LAW 65 OF THE ASSOCIATION, AS AMENDED, IS INVALID BY REASON OF THE FACT THAT THE AMENDMENT EXCEEDS THE AUTHORITY VESTED IN THE APPLICANT AS SET OUT IN THE OBJECTS OF ITS SUPPLEMENTARY LETTERS PATENT DATED APRIL 26TH, 1962. THE OBJECTS READ:

(A) TO IMPROVE THE EFFICIENCY OF THE SERVICE AND TO PROMOTE THE COMMON INTERESTS OF THE MEMBERS OF THE CORPORATION;

(B) TO REPRESENT THE MEMBERS OF THE CORPORATION AS EMPLOYEES OF THE GOVERNMENT OF THE PROVINCE OF ONTARIO OR A BOARD, COMMISSION OR OTHER EMANATION OF THE CROWN IN THE RIGHT OF ONTARIO OR AS A PUBLIC SERVANT WITHIN THE PROVISIONS OF THE PUBLIC SERVICE ACT (ONTARIO) IN MATTERS GOVERNING APPOINTMENT, PROMOTION, REMUNERATION, VACATION, HOURS OF WORK, SUPERANNUATION, TRANSFER, DISCIPLINE, INCLUDING SUSPENSION, DEMOTION AND DISMISSAL, AND IN MATTERS RELEVANT TO CONDITIONS OF WORK; AND

(c) TO ENTER INTO ANY ARRANGEMENTS WITH ANY AUTHORITIES, GOVERNMENTAL, MUNICIPAL, LOCAL OR OTHERWISE, THAT MAY SEEM CONDUCTIVE TO THE CORPORATION'S RIGHTS, PRIVILEGES AND CONCESSIONS WHICH THE CORPORATION MAY THINK DESIRABLE TO OBTAIN AND TO CARRY OUT, EXERCISE AND COMPLY WITH ANY SUCH ARRANGEMENTS, RIGHTS, PRIVILEGES AND CONCESSIONS.

6. ONLY CLAUSE (c) OF THE OBJECTS COULD CONCEIVABLY ENCOMPASS THE RESPONDENT. THE RELEVANT WORDS OF THE CLAUSE ARE "AUTHORITIES, GOVERNMENTAL, MUNICIPAL, LOCAL OR OTHERWISE". OBVIOUSLY, THE RESPONDENT IS NOT A GOVERNMENTAL, MUNICIPAL OR LOCAL AUTHORITY. MOREOVER, THE WORDS "OR OTHERWISE" CLEARLY RELATE TO AND MODIFY THE WORD "AUTHORITIES". THE WORD "AUTHORTIES". IN THE CONTEXT IN WHICH IT IS USED, IN OUR OPINION, CONTEMPLATES PUBLIC AUTHORITIES AND NOT INDEPENDENT CONTRACTORS. IN THE VERSAFOOD SERVICES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 539, WHICH WAS AN EARLIER APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT FOR THE SAME UNIT OF EMPLOYEES, THE BOARD WAS SATISFIED THAT THE RESPONDENT DID NOT COME WITHIN ANY OF THE OBJECT CLAUSES OF THE SUPPLEMENTARY LETTERS PATENT DATED APRIL 26TH, 1962. WE ARE NOT PERSUADED BY THE SUBMISSIONS OF THE REPRESENTATIVE OF THE APPLICANT THAT THERE IS ANY REASON FOR THE BOARD TO DEPART FROM ITS FINDING IN THE PREVIOUS APPLICATION. EVEN ASSUMING THAT SECTION 3(A) OF BY-LAW 65, AS AMENDED, IS BROAD ENOUGH TO PERMIT THE APPLICANT TO TAKE INTO MEMBERSHIP THE EMPLOYEES OF THE RESPONDENT, IN OUR VIEW, THE BY-LAW IS BEYOND THE SCOPE OF THE OBJECTS OF THE ASSOCIATION AS CONTAINED IN ITS SUPPLEMENTARY LETTERS PATENT.

7. IN LIGHT OF THE ABOVE CIRCUMSTANCES AND HAVING REGARD TO THE PRACTICE OF THE BOARD AS SET FORTH IN THE METROPOLITAN LIFE INSURANCE COMPANY CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1967, P. 437, THE BOARD FINDS THAT THE APPLICANT CANNOT ACCEPT INTO MEMBERSHIP THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT IS SEEKING CERTIFICATION AS BARGAINING AGENT IN THE INSTANT APPLICATION.

8. THE APPLICATION IS DISMISSED.

14002-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) v. WHITAKER CABLE OF CANADA, LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: IAN SCOTT, HARRY HADDAWAY FOR THE APPLICANT, RICHARD R. BOWES, C. HOWARD CLARK FOR THE RESPONDENT AND GEORGE WOOD FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD:

JANUARY 17, 1968.

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4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN AND SUPERVISOR AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE RESPONDENT SUBMITTED AT THE HEARING THE APPLICATION WAS PREMATURE BY REASON OF THE BUILD-UP IN THE WORK FORCE AT ITS PLANT. ACCORDING TO THE EVIDENCE AS OF THE DATE OF THE APPLICATION THERE WERE 89 EMPLOYEES OF THE RESPONDENT. THE REPRESENTATIVE OF THE RESPONDENT STATED THAT THE RESPONDENT EXPECTED TO HAVE APPROXIMATELY 200 EMPLOYEES BY OCTOBER, 1968, AND 300 EMPLOYEES BY THE FOLLOWING YEAR, BUT SUGGESTED THAT A PROPER REPRESENTATIVE NUMBER OF EMPLOYEES FOR THE PURPOSES OF CERTIFICATION PROCEEDINGS WOULD BE 150. HOWEVER, THE RESPONDENT ADMITTED THAT IT DID NOT HAVE A CLEAR SCHEDULE FOR A BUILD-UP IN THIS REGARD. IT IS ALSO TO BE NOTED THAT OF THE NUMBER OF EMPLOYEES SUGGESTED TO BE APPROPRIATE BY THE RESPONDENT FOR CERTIFICATION THERE WERE APPROXIMATELY 60% EMPLOYED AS OF THE DATE OF THE APPLICATION. THE PLANT HAS BEEN IN PRODUCTION SINCE SEPTEMBER, 1967 AND HIRED ITS FIRST EMPLOYEES IN JULY, 1967. COUNSEL FOR THE APPLICANT SUBMITTED THAT THE PLANT IS IN PRODUCTION, MATERIALS HAVE BEEN SHIPPED TO CUSTOMERS AND EMPLOYEES ARE OPERATIVE IN EACH OF THE CLASSIFICATIONS AS SET OUT IN THE DEPARTMENT OF LABOUR REPORT DATED OCTOBER 3RD, 1967 WITH RESPECT TO THE RESPONDENT'S PLANT. FURTHERMORE, IN ORDER TO OBTAIN POSTPONEMENT, THE RESPONDENT MUST SHOW A SCHEDULE OF BUILD-UP TO A CERTAIN LEVEL WITHIN A REASONABLE LENGTH OF TIME WHICH IN THIS CASE IT FAILED TO DO.

6. IN CONSIDERING THE BUILD-UP SITUATION, THE BOARD MUST ASSESS THE RIGHTS TO COLLECTIVE BARGAINING OF THE PRESENT EMPLOYEES AND THE RIGHTS OF FUTURE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE. HAVING REGARD TO THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES IN THE INSTANT CASE, THE BOARD FINDS THAT AS OF THE DATE OF THE APPLICATION THE EMPLOYEES CONSTITUTED A SUBSTANTIAL AND REPRESENTATIVE PROPORTION OF THE WORK FORCE TO BE EMPLOYED. THE BOARD THEREFORE DENIES THE RESPONDENT'S REQUEST TO POSTPONE THE MAKING OF THE FINAL DETERMINATION IN THIS MATTER OR TO ORDER A REPRESENTATION VOTE.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON JANUARY 3RD, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14003-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) v. COBOURG CONSTRUCTION COMPANY LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: H.A. HERRON FOR THE APPLICANT,
J. M. ROLPH FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 18, 1968.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT OF ALL EMPLOYEES OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA No. 10 ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

4. THE APPLICANT WAS A MEMBER OF A COUNCIL OF TRADE UNIONS TOGETHER WITH TEAMSTERS, LOCAL UNION No. 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA AND THE INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 597. THE ABOVE COUNCIL OF TRADE UNIONS ENTERED INTO A COLLECTIVE AGREEMENT DATED DECEMBER 23RD, 1965, WHICH COVERS THE EMPLOYEES OF THE RESPONDENT IN A GEOGRAPHIC AREA WHICH ENCOMPASSES THE AREA FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION. THE ABOVE COLLECTIVE AGREEMENT WAS EFFECTIVE FROM JANUARY 3RD, 1966 TO JANUARY 31ST, 1967 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. NOTICE WAS GIVEN BY THE COUNCIL OF ITS DESIRE TO RENEW THE COLLECTIVE AGREEMENT WITHIN THE APPROPRIATE TIME LIMITS PROVIDED BY THE AGREEMENT. BY LETTER DATED APRIL 21ST, 1967, THE APPLICANT ADVISED THE RESPONDENT THAT IT HAD WITHDRAWN FROM THE COUNCIL OF TRADE UNIONS AND WOULD NOT BE A PARTY TO ANY SUBSEQUENT COLLECTIVE AGREEMENT THAT WAS NEGOTIATED.

5. THE BOARD FINDS THAT THE APPLICANT HAS CONTINUED TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT WHO ARE THE SUBJECT OF THIS APPLICATION BY VIRTUE OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE COUNCIL OF TRADE UNIONS OF WHICH IT WAS A MEMBER, THAT EXPIRED ON JANUARY 31ST, 1967. HAVING REGARD TO THE ABOVE FINDING, THE BOARD FURTHER FINDS THAT THE INSTANT APPLICATION IS THEREFORE UNTIMELY.

6. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

14005-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 506 (APPLICANT) v. FRANKEL FORMWORK COMPANY (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: S. G. CRAGG AND R. KOSKIE FOR THE
APPLICANT, B. W. BINNING AND M. KERZNER FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 16, 1968.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING
AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT COMPOSED OF ALL
CONSTRUCTION LABOURERS IN BOARD GEOGRAPHIC AREA No. 8.

4. THE RESPONDENT SUBMITS THAT THE APPLICATION IS UNTIMELY
BY REASON OF THE FACT THAT THE APPLICANT ALREADY HOLDS THE BARGAIN-
ING RIGHTS FOR THE EMPLOYEES OF THE RESPONDENT WHO ARE THE SUBJECT
OF THE INSTANT APPLICATION BY VIRTUE OF A LETTER OF UNDERSTANDING
THAT WAS SENT TO THE RESPONDENT BY THE APPLICANT UNDER COVERING
LETTER OF JUNE 16TH, 1967 AND BY A SUBSEQUENT COLLECTIVE AGREEMENT
WHICH WAS ENTERED INTO BY THE APPLICANT AND THE GENERAL CONTRACTORS'
SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION.

5. THE APPLICANT IN A LETTER DATED JUNE 16TH, 1967 FORWARDED
TO THE RESPONDENT THREE COPIES OF A LETTER OF UNDERSTANDING DATED
JUNE 19TH WHICH WAS ALREADY SIGNED BY AN OFFICER OF THE APPLICANT.
THE APPLICANT AND THE RESPONDENT ARE SHOWN AS PARTIES TO THE
LETTER OF UNDERSTANDING. THE APPLICANT IN ITS LETTER OF JUNE 16TH
INVITED THE RESPONDENT TO SIGN ALL THREE COPIES AND RETURN TWO OF
THEM TO THE APPLICANT. THE BODY OF THE LETTER OF UNDERSTANDING
READS AS FOLLOWS:

WE, THE UNDERSIGNED, HEREBY MUTUALLY AGREE TO THE
TERMS OF AN INTERIM AGREEMENT AS STATED BELOW:

1. THERE WILL BE AN INCREASE IN THE HOURLY RATE FROM
\$2.75 TO \$3.00 PER HOUR, AS OF THE DAY OF SIGNING.
2. THERE WILL BE NO SUBSEQUENT LOCKOUT OR STRIKE OF
ANY MEN EMPLOYED BY THIS CONTRACTOR OR THE
UNION, UNTIL CONTRACT NEGOTIATIONS ARE COMPLETED
WITH THE TORONTO CONSTRUCTION ASSOCIATION,
GENERAL CONTRACTORS SECTION.
3. THE TERMS AND PROVISIONS OF A NEW AGREEMENT AS
NEGOTIATED WITH THE GENERAL CONTRACTORS SECTION
OF THE TORONTO CONSTRUCTION ASSOCIATION WILL BE
BINDING ON BOTH PARTIES.

6. THE GENERAL CONTRACTORS SECTION OF THE TORONTO BUILDERS EXCHANGE AND THE APPLICANT ENTERED INTO A NEW COLLECTIVE AGREEMENT ON JULY 27TH, 1967. MAURICE KERZNER, THE MANAGER OF THE RESPONDENT, WAS ON THE EMPLOYER BARGAINING COMMITTEE AND SIGNED THE COLLECTIVE AGREEMENT IN THAT CAPACITY. THE RESPONDENT, ALTHOUGH A MEMBER OF THE TORONTO CONSTRUCTION ASSOCIATION, IS NOT A MEMBER OF THE GENERAL CONTRACTORS' SECTION. MOREOVER, THERE IS NO EVIDENCE TO SUPPORT A FINDING THAT THE RESPONDENT HAS BEEN BOUND BY ANY PREVIOUS COLLECTIVE AGREEMENTS ENTERED INTO BY THE APPLICANT AND THE GENERAL CONTRACTORS' SECTION OF THE TORONTO CONSTRUCTION ASSOCIATION. CONSIDERED BY ITSELF, THE BOARD THEREFORE FINDS THAT THE RESPONDENT IS NEITHER A PARTY TO NOR BOUND BY THE CURRENT COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE AFOREMENTIONED PARTIES.

7. THE EVIDENCE IS THAT KERZNER ONLY EXECUTED THE LETTER OF UNDERSTANDING ON DECEMBER 29TH, 1967, SOME FIVE MONTHS AFTER THE ABOVE REFERRED TO COLLECTIVE AGREEMENT WAS EXECUTED. INDEED, IT WAS NOT EVEN EXECUTED UNTIL AFTER THE INSTANT APPLICATION WAS FILED ON DECEMBER 21ST, 1967. MOREOVER, NO COPIES OF THE EXECUTED LETTER OF UNDERSTANDING WERE RETURNED TO THE APPLICANT. THE APPLICANT, IN FACT, WAS ONLY ADVISED OF ITS EXECUTION BY THE RESPONDENT A DAY PRIOR TO THE BOARD HEARING. IT IS OBVIOUS THAT THE LETTER OF UNDERSTANDING CAN HAVE NO RETROACTIVE EFFECT MAKING THE COLLECTIVE AGREEMENT ENTERED INTO ON JULY 27TH, 1967 BINDING UPON THE RESPONDENT. FOR THE LETTER OF UNDERSTANDING TO HAVE HAD THE EFFECT OF SO BINDING THE RESPONDENT, IT WAS INCUMBENT UPON THE RESPONDENT TO EXECUTE IT PRIOR TO JULY 27TH AND SO ADVISE THE APPLICANT OF ITS ACCEPTANCE.

8. IN THE CIRCUMSTANCES THE BOARD FINDS THAT NEITHER THE LETTER OF UNDERSTANDING AND/OR THE COLLECTIVE AGREEMENT IS A BAR TO THE INSTANT APPLICATION.

9. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. AT THE HEARING IN THIS MATTER COUNSEL FOR THE APPLICANT CHALLENGED THE LIST FILED BY THE RESPONDENT. THE BOARD ACCORDINGLY AUTHORIZES MR. W. G. JACKSON, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 29, 1968.

1. THE BOARD IN PARAGRAPH 10 OF ITS DECISION OF JANUARY 16TH, 1968 APPOINTED MR. W. G. JACKSON, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT.
2. BY LETTER DATED JANUARY 25TH, 1968, COUNSEL FOR THE RESPONDENT ADVISED MR. JACKSON THAT THE NAMES OF SEVEN EMPLOYEES LISTED ON SCHEDULE A OF THE RESPONDENT'S REPLY SHOULD NOT HAVE BEEN INCLUDED ON THE SCHEDULE AS THEY WERE WORKING OUTSIDE THE GEOGRAPHIC AREA OF THE BARGAINING UNIT THAT THE BOARD FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING IN PARAGRAPH 9 OF ITS DECISION OF JANUARY 16TH, 1968. THE NAMES OF THE SEVEN EMPLOYEES CONCERNED ARE G. BOSCO, J. BRANCO, J. CAMPOS, M. CUSTODIO, J. HORVATH, F. MARTUCCI AND C. TEDESCO. THE LIST OF EMPLOYEES ON SCHEDULE A ACCORDINGLY IS REDUCED FROM 45 TO 38.
3. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 3RD, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
4. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14013-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 2486 (APPLICANT) V. INDUSTRIAL-MINE INSTALLATIONS LIMITED
(RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS E. BOYER AND
R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 11, 1968.

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2. THE APPLICANT FILED TWELVE CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES ARE SIGNED BY THE MEMBERS AND INDICATE THAT MONTHLY DUES OF \$6.00 HAVE BEEN PAID FOR AT LEAST ONE MONTH WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE CERTIFICATES ARE CHECKED AND CERTIFIED CORRECT BY AN OFFICER OF THE APPLICANT. THE APPLICANT ALSO FILED TWELVE COMBINATION APPLICATIONS FOR MEMBERSHIP AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE

RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY MORE THAN ONE PERSON. THE APPLICANT ALSO FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY.

3. THE RESPONDENT FILED A REPLY, INCLUDING A LIST OF EMPLOYEES AND SPECIMEN SIGNATURES, WITHIN THE TIME FIXED IN ACCORDANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCEDURE. THE LIST INDICATES THAT THERE ~~WERE~~ TWENTY-FOUR EMPLOYEES AT WORK ON DECEMBER 30, 1967, THE DATE OF THE MAKING OF THE APPLICATION AND, FURTHER, THAT THERE WERE FIFTY-SEVEN EMPLOYEES WHO WERE NOT AT WORK ON THAT DATE BECAUSE OF A VACATION SHUT-DOWN. MOST OF THE EMPLOYEES CEASED TO WORK ON DECEMBER 21 OR 22 AND WERE EXPECTED TO RETURN ON JANUARY 3. TWENTY-ONE OF THE NAMES APPEARING ON THE TWELVE COMBINATION APPLICATIONS AND RECEIPTS AND TWELVE CERTIFICATES OF MEMBERSHIP FILED BY THE APPLICANT CORRESPOND TO NAMES APPEARING ON THE LIST OF EMPLOYEES AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION FILED BY THE RESPONDENT.

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6. THE RESPONDENT PROPOSES THAT THE BARGAINING UNIT BE RESTRICTED TO THE TOWNSHIP OF HYMAN IN THE DISTRICT OF SUDBURY. THE APPLICANT IS ASKING FOR THE USUAL BOARD GEOGRAPHIC AREA No. 17. IT APPEARS CLEAR THAT THE JOB SITE AFFECTED BY THE APPLICATION FALLS WITHIN BOARD AREA No. 17. THE BOARD SEES NO REASON TO DEPART FROM ITS USUAL PRACTICE IN THE PRESENT CASE. ACCORDINGLY, THE BOARD, THEREFORE, FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. IN THE APPLICATIONS FALLING UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, IT IS THE PRACTICE OF THE BOARD TO FIX THE LIST OF EMPLOYEES BY REFERENCE TO THOSE ACTUALLY AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. SEE KEYSTONE CONTRACTORS LIMITED CASE, O.L.R.B. MONTHLY REPORTS, FEBRUARY 1966, P. 821. ON THIS BASIS IT IS CLEAR, THEREFORE, THAT THE APPLICANT IS IN A POSITION WHERE THE BOARD WOULD BE ENTITLED TO CERTIFY WITHOUT A REPRESENTATION VOTE. HOWEVER, THERE WERE FILED WITH THE BOARD TWO DOCUMENTS CONTAINING A TOTAL OF 51 NAMES INDICATING OPPOSITION TO THE APPLICATION. THIRTY-EIGHT OF THE NAMES APPEARING ON THESE TWO DOCUMENTS CORRESPOND TO NAMES ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. ONLY THREE OF THE SAID 38 NAMES CORRESPOND TO NAMES APPEARING ON THE 12 COMBINATION APPLICATIONS AND RECEIPTS AND 12 CERTIFICATES OF MEMBERSHIP FILED BY THE APPLICANT. THE APPLICANT THUS HAS FILED UNCHALLENGED EVIDENCE OF MEMBERSHIP FOR 18 PERSONS AMONG THE 24 PERSONS AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION.

8. THE RESPONDENT HAS REQUESTED A HEARING ON THE GROUND THAT THE APPLICANT DOES NOT HAVE A MAJORITY OF MEMBERS IN GOOD STANDING IN THE BARGAINING UNIT. NORMALLY IN CASES WHERE A STATEMENT OF DESIRE IN OPPOSITION TO THE APPLICATION HAS BEEN FILED, THE BOARD WOULD DIRECT A HEARING. IN THE PRESENT CASE, HOWEVER, THIS WOULD SERVE NO USEFUL PURPOSE BECAUSE EVEN IF FULL WEIGHT IS ACCORDED THE DOCUMENTS FILED IN OPPOSITION TO THE APPLICATION, THE APPLICANT IS STILL IN A POSITION TO ASK FOR OUTRIGHT CERTIFICATION. HAVING REGARD TO THESE CONSIDERATIONS AND TO THE PROVISIONS OF SECTION 75 (9A) OF THE LABOUR RELATIONS ACT, THE BOARD DOES NOT DEEM IT NECESSARY TO HOLD A HEARING IN THIS CASE.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 9, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

INDEXED ENDORSEMENTS - TERMINATION

13709-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. SPRING PLASTERING LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: RAYMOND KOSKIE AND J.B. WATERMAN FOR THE APPLICANT, J. ALICK RYDER FOR THE RESPONDENT, R.D. PERKINS FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 25, 1968.

1. THIS IS AN APPLICATION MADE PURSUANT TO THE PROVISIONS OF SECTION 45A OF THE ACT FOR A DECLARATION THAT THE RESPONDENT WAS NOT, AT THE TIME THE RESPONDENT ENTERED INTO A COLLECTIVE AGREEMENT WITH THE INTERVENER, ENTITLED TO REPRESENT THE EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT.

2. AT THE HEARING ON OCTOBER 18TH AND 19TH, 1967, THE RESPONDENT WAS NOT PREPARED TO ADDUCE EVIDENCE TO ESTABLISH ITS STATUS AS A TRADE

UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT. THE BOARD, FOR THE PURPOSE OF DEALING WITH THE OTHER MATTERS IN DISPUTE, ASSUMED THAT THE RESPONDENT WAS A TRADE UNION. SUBSEQUENTLY, THE BOARD FOUND IN ITS DECISION OF DECEMBER 13TH, 1967, THAT THE DOCUMENTARY EVIDENCE SUBMITTED BY THE RESPONDENT IN THIS CASE WAS SUFFICIENT TO ESTABLISH THAT THE RESPONDENT WAS ENTITLED TO REPRESENT THE EMPLOYEES OF THE INTERVENER. THIS FINDING WAS MADE ON THE ASSUMPTION THAT THE RESPONDENT WAS A TRADE UNION. IN ITS DECISION DATED JANUARY 3RD, 1968, THE BOARD DIRECTED THAT THIS MATTER BE RELISTED FOR HEARING TO PROVIDE THE RESPONDENT WITH AN OPPORTUNITY TO ESTABLISH ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT. THIS MATTER CAME ON FOR HEARING ON JANUARY 10TH, 1968, AND AT THIS HEARING THE RESPONDENT ADDUCED EVIDENCE CONCERNING THE STEPS WHICH WERE TAKEN TO BRING THE RESPONDENT INTO EXISTENCE. THE QUESTION TO BE DETERMINED BY THE BOARD IS WHETHER THE RESPONDENT AS OF OCTOBER 6TH, 1966, THE DATE THE COLLECTIVE AGREEMENT IN QUESTION WAS ENTERED INTO, WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE EVIDENCE ADDUCED BY THE RESPONDENT IN SUPPORT OF ITS STATUS IS AS FOLLOWS AND IS DOCUMENTED IN A MINUTE BOOK WHICH WAS INTRODUCED INTO EVIDENCE. THE RESPONDENT'S BUSINESS MANAGER WHO TESTIFIED CONCERNING THE EVENTS WHICH LED TO THE FORMATION OF THE RESPONDENT GAVE EVIDENCE TO THE EFFECT THAT THE MINUTE BOOK CORRECTLY DISCLOSES ALL THE STEPS TAKEN WHICH LED TO THE RESPONDENT'S FORMATION.

4. THE MINUTE BOOK DISCLOSES THAT ON SEPTEMBER 6TH, 1966, A MEETING WAS HELD BY THE "FOUNDING COMMITTEE". A DISCUSSION WAS HAD AT THE MEETING CONCERNING THE DISSATISFACTION OF CERTAIN EMPLOYEES WITH THE ACTIVITIES OF LOCAL 117 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, WHICH LED TO A DECISION TO BREAK AWAY FROM THAT ORGANIZATION. THE MINUTES FURTHER DISCLOSED THAT A LAWYER WAS RETAINED TO "ADVISE IN ORGANIZING A CANADIAN UNION". UPON A MOTION DULY MADE, SECONDED AND UNANIMOUSLY CARRIED, SERGIO PANTAROTTO WAS "APPOINTED" PRESIDENT, VLADIMIRRO MASSAROTTO WAS "APPOINTED" BUSINESS MANAGER, AND A. COLLINS WAS "APPOINTED" CORRESPONDING FINANCIAL SECRETARY AND TRUSTEE. THE FOUNDING COMMITTEE THEN DECIDED THAT THE INITIATION FEE BE \$25.00 AND MONTHLY DUES BE \$6.00 PER MONTH. THE MINUTES DISCLOSED THAT SEPTEMBER 8TH, 1966 WAS SET ASIDE AS THE DATE FOR THE FOUNDING MEETING. IT WAS FURTHER DECIDED THAT SEPTEMBER 11TH, 1966 BE SET AS REGISTRATION DAY. THE NEXT ITEM CONTAINED IN THE MINUTES OF THE MEETING OF SEPTEMBER 6TH WAS THAT ELECTIONS FOR SIX EXECUTIVE BOARD MEMBERS AND A VICE-PRESIDENT BE HELD AT THE FIRST MEETING AFTER THE CONSTITUTION HAD BEEN ADOPTED AND THAT A GENERAL ELECTION OF OFFICERS BE HELD SIX MONTHS AFTER THE ADOPTION OF THE CONSTITUTION. THE FINANCIAL SECRETARY AND THE BUSINESS MANAGER WERE TO BE RESPONSIBLE FOR ALL MONIES RECEIVED AND EXPENDED.

5. THE NEXT STEP TAKEN WAS THE "FOUNDING MEETING OF THE CANADIAN PLASTERERS' UNION, SEPTEMBER 8TH, 1966". THE MINUTES OF THIS MEETING RECORD THAT THE FOLLOWING OFFICERS WERE PRESENT: PRESIDENT SERGIO PANTAROTTO; BUSINESS MANAGER VLADIMIRRO MASSAROTTO; AND SECRETARY A. COLLINS. THE MINUTES OF THE MEETING THEN READ AS FOLLOWS:

THE PRES. CALLED THE MEETING TO ORDER AT 8:10 P.M. AND GAVE A SHORT EXPLANATION FOR CALLING THE MEETING, HE THEN TURNED THE MEETING OVER TO THE BUS. MGR. V. MASSAROTTO.

MASSAROTTO SPOKE OF EVENTS OVER THE LAST TEN MONTHS, AND REVIEWED THE FIRST TRUSTEESHIP, OF IT BEING LIFTED, AND NO EXPLANATION BEING GIVEN, NOW WE HAVE ANOTHER TRUSTEESHIP, IMPOSED ON MAY 15TH 1966, THAT WE WAITED 8 WEEKS BEFORE HEARING THE CHARGES, LAID BY VICE PRES. C.W. IRVINE, AND AFTER THE HEARING ON JULY 20 - 1966, WE HAVE WAITED ANOTHER 7 WEEKS, FOR THE RESULTS FROM HEAD QUARTERS IN WASHINGTON, AND STILL HAVE HEARD NOTHING, IN SPITE OF LETTERS, AND PHONE CALLS TO WASHINGTON, ASK FOR SOME ACTION.

THE BUS. MGR. THEN TOLD THE MEETING, THAT AT A FOUNDING COMMITTEE MEETING, HELD SEPT. 6-1966, IT WAS DECIDED THAT A NEW UNION BE FORMED, TO BE KNOWN AS
"THE CANADIAN PLASTERER'S UNION"
THIS WAS RECEIVED BY THE MEETING WITH LOUD CHEERS.

PRES. PANTAROTTO, TRANSLATED THIS TO ITALIAN AND THEN INVITED THE FOUNDING COMMITTEE TO THE FRONT OF THE HALL, AND INTRODUCED THEM TO THE MEETING.

THE SECT. WAS THEN ASK TO READ THE MINUTES OF THE FOUNDING COMMITTEE MEETING, THEY WERE TRANSLATED TO ITALIAN.

THE MEETING WAS THEN INFORMED THAT A SPECIAL REGISTRATION DAY WOULD ON SUNDAY SEPT. 11 - 1966 STARTING AT 9 A.M.

THE MEETING THEN ADJOURNED AT 10:05 P.M.

6. THE NEXT ITEM ENTERED IN THE MINUTE BOOK READS AS FOLLOWS:

SPECIAL REGISTRATION DAY
SUNDAY SEPTEMBER 11 - 1966
2773 DUFFERIN STREET, TORONTO

115 REGISTRATIONS RECORDED.

7. THE NEXT ITEM IN THE MINUTE BOOK READS AS FOLLOWS:

SPECIAL CALLED MEETING OF
"THE CANADIAN PLASTERER'S UNION"
SUNDAY SEPT. 18/66 AT 2773 DUFFERIN ST.

TO PRESENT THE CONSTITUTION FOR ADOPTION
TO ELECT A VICE PRESIDENT AND TO
ELECT 6 MEMBERS TO THE EXECUTIVE BOARD

PRES. PANTAROTTO OPENED THE MEETING AT 9:55 A.M.

BRO. MASSAROTTO, EXPLAINED THE REASON FOR CALLING THE MEETING, WHICH WAS TO ADOPT THE CONSTITUTION, ELECT A VICE PRESIDENT, AND 6 MEMBERS TO THE EXECUTIVE BOARD. HE TOLD THE MEMBERS, THAT THE AIMS OF THIS UNION, WAS TO HELP EACH OTHER TO A BETTER LIVING, WITH BETTER WORKING CONDITIONS, TO COOPERATE WITH ALL, AND LIVE IN HARMONY.

BRO. PANTAROTTO INFORMED THE MEMBERS THAT WE WOULD SIGN UP ANY PLASTERER, WHO WISHES TO JOIN WITH US, AND HELP TO BUILD A BETTER UNION FOR CANADIANS, FREE FROM OUTSIDE INTERFERENCE.

THE SECRETARY WAS THEN ASK TO READ THE CONSTITUTION, IT WAS READ ONE ARTICLE AT A TIME, BRO. PANTAROTTO THEN TRANSLATED EACH ARTICLE INTO ITALIAN SO ALL MEMBERS WOULD UNDERSTAND.

A MOTION WAS MADE AND SECONDED TO "ACCEPT" THE CONSTITUTION AND A STANDING VOTE WAS ASKED FOR AND THE MOTION TO ACCEPT WAS CARRIED UNANIMOUSLY.

8. THE MINUTES OF THE MEETING OF SEPTEMBER 18TH, 1966 THEN DISCLOSED THE FOLLOWING EVENTS:

NOMINATIONS FOR VICE PRESIDENT WERE CALLED FOR.

BRO. A. RADOVSKIS, WAS ELECTED BY ACCLAMATION.

NOMINATIONS WERE THEN OPENED FOR 6 MEMBERS FOR THE EXECUTIVE BOARD.

BRO'S NOMINATED AND STANDING WERE:-

BRO. A. GAIARDO	64 VOTES	ELECTED
" G. MORO	63 "	ELECTED
" F. AVOLEDO	51 "	ELECTED
" G. DELL SAL	33 "	
" A. GENTILLE	50 "	ELECTED
" E. PASINI	48 "	ELECTED
" V. SMARGIASSO	42 "	ELECTED
" P. PALERMO	37 "	
65	BALLOTS CAST.	

MEETING ADJOURNED AT 12:55 P.M.

9. THE NEXT MINUTES CONTAINED IN THE MINUTE BOOK ARE MINUTES OF A SPECIAL GENERAL MEETING HELD ON OCTOBER 6TH, 1966 TO RATIFY AN AGREEMENT WITH CERTAIN CONTRACTORS. THE MINUTES OF OCTOBER 6TH, 1966 DISCLOSES THAT 92 BALLOTS WERE CAST, ALL IN FAVOUR OF ACCEPTING THE AGREEMENT.

10. THE APPLICANT ARGUED THAT THE STEPS TAKEN BY THE RESPONDENT AS REPORTED ABOVE FAILED TO DISCLOSE THAT THE RESPONDENT TOOK ALL THE NECESSARY STEPS TO CONSTITUTE ITSELF AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. IN PARTICULAR, THE APPLICANT ARGUED THAT THE THREE MAIN OFFICES, BEING THAT OF PRESIDENT, BUSINESS MANAGER AND SECRETARY-TREASURER, HAVE NEVER BEEN FILLED PURSUANT TO THE REQUIREMENTS OF THE RESPONDENT'S CONSTITUTION. THE APPLICANT FURTHER ARGUED THAT ALL OF THE MEMBERSHIP EVIDENCE UPON WHICH THE RESPONDENT RELIED WAS SIGNED ON SEPTEMBER 11TH, 1966, APPROXIMATELY ONE WEEK PRIOR TO THE MEETING AT WHICH THE CONSTITUTION WAS "ACCEPTED". DEALING WITH THE LATTER OBJECTION FIRST, IT WOULD APPEAR THAT ON THE EVIDENCE BEFORE US THE RESPONDENT'S MEMBERSHIP EVIDENCE WAS ALL SIGNED PRIOR TO THE TIME THE RESPONDENT CAME INTO EXISTENCE. IN THIS REGARD, THE BOARD, IN M. LOEB LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1962, P. 69, STATED AS FOLLOWS:

WHERE EVIDENCE OF MEMBERSHIP IN A TRADE UNION SUBMITTED IN SUPPORT OF AN APPLICATION FOR CERTIFICATION CONSISTS OF APPLICATION CARDS, SIGNED, AND PAYMENT OF INITIATION FEES, PRIOR TO THE TIME THAT THE APPLICANT CAME INTO EXISTENCE AS AN ORGANIZATION, THE BOARD DOES NOT REGARD SUCH EVIDENCE AS VALID EVIDENCE OF MEMBERSHIP AFTER THE APPLICANT WAS FORMED, OR IN THE ABSENCE OF SOME MOTION BY THE APPLICANT RECTIFYING THE MEMBERSHIP OF PERSONS WHO APPLIED FOR MEMBERSHIP PRIOR TO THE APPLICANT BEING FORMED. SEE STEDMAN BROTHERS LIMITED, O.L.R.B. MONTHLY REPORTS, FEBRUARY 1962, P. 386. COMPARE FILEY-HALL PAPER BOX COMPANY, (1952), C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '49-'54 17,037, C.L.S. 76-349 ESPECIALLY AT P. 76-350; PORT COLBORNE GENERAL HOSPITAL CASE #1, (1955) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59 16,025, C.L.S. 76-483; PORT COLBORNE GENERAL HOSPITAL CASE #2, (1956) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59 16,033; BROMO SELTZER LIMITED, (1956) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59 16,039, C.L.S. 76-509; J.A. LAPALME & SONS LIMITED, (1956) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 16,034, C.L.S. 76-506; ALGOM URANIUM MINES LIMITED, (1956) C.C.H. CANADIAN

LABOUR LAW REPORTER, TRANSFER BINDER '54-'59
16,037, C.L.S. 76-508; BASIN FOUNDRIES LIMITED,
(1956) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER
BINDER '55-'59 16,035, C.L.S. 76-507; CANADA PACKERS
LIMITED, (1956) C.C.H. CANADIAN LABOUR LAW REPORTER,
TRANSFER BINDER '55-'59 16,036, C.L.S. 76-505;
CANADIAN HOME PRODUCTS LIMITED, (1960) C.C.H.
CANADIAN LABOUR LAW REPORTER, 16,173 C.L.S. 76-688.

11. WHILE THE RESPONDENT ARGUED THAT THE FACT THAT THE CONSTITUTION WAS ADOPTED AT A MEETING SUBSEQUENT TO THE SIGNING OF THE MEMBERS, THERE IS NOTHING IN THE MINUTE BOOK WHICH WOULD EITHER IDENTIFY THE PERSONS AT THE MEETING AS BEING THE SAME PERSONS WHO WERE "REGISTERED" ON SEPTEMBER 11TH, 1966, NOR DO THE MINUTES DISCLOSE THAT THE RESPONDENT CONFIRMED OR RATIFIED AS MEMBERS THE PERSONS WHO SIGNED THE REGISTRATION FORMS ON SEPTEMBER 11TH.

12. WHILE THE BOARD HAS PREVIOUSLY FOUND THAT THE REGISTRATION FORMS AND RECEIPTS WERE SUFFICIENT DOCUMENTARY EVIDENCE OF MEMBERSHIP, IF THE BOARD WERE TO ASSUME THAT THE RESPONDENT WAS IN FACT A TRADE UNION, SUCH DOCUMENTARY EVIDENCE TAKES ON A DIFFERENT LIGHT WHEN IT IS DISCLOSED THAT IT WAS SIGNED PRIOR TO THE COMING INTO EXISTENCE OF THE RESPONDENT ORGANIZATION. THE FACT THAT THE CARDS WERE SIGNED PRIOR TO THE CONSTITUTION BEING ADOPTED MIGHT HELP EXPLAIN WHY THE CARDS WERE CALLED REGISTRATION CARDS RATHER THAN APPLICATION FOR MEMBERSHIP CARDS.

13. IN ADDITION, IT WOULD APPEAR THAT THE THREE MAIN OFFICERS OF THE RESPONDENT WERE APPOINTED APPROXIMATELY TWO WEEKS PRIOR TO THE CONSTITUTION BEING ADOPTED AND THEIR APPOINTMENT WAS NEVER CONFIRMED BY THE MEMBERS. IT APPEARS THAT IT WAS ASSUMED BY ALL THAT THEY WOULD CONTINUE IN THE OFFICES TO WHICH THEY WERE APPOINTED, WITHOUT BEING ELECTED PURSUANT TO THE PROVISIONS OF THE CONSTITUTION. IN THIS RESPECT, IT IS OF INTEREST TO NOTE THAT AT THE MEETING AT WHICH THE VICE-PRESIDENT AND THE EXECUTIVE BOARD MEMBERS WERE ELECTED THE MINUTES DO NOT DISCLOSE THAT IT WAS THE INTENT OF THE PERSONS CALLING THE MEETING TO OPEN UP THE THREE OFFICES FOR ELECTION. THE MINUTES DISCLOSED THAT THE MEETING WAS CALLED FOR THE EXPRESSED PURPOSE "TO PRESENT THE CONSTITUTION FOR ADOPTION, TO ELECT A VICE-PRESIDENT AND TO ELECT SIX MEMBERS TO THE EXECUTIVE BOARD". IN VIEW OF THE MANNER IN WHICH THE TOP OFFICES OF THE ASSOCIATION WERE IMPOSED UPON THE PERSONS WHO ATTENDED THE MEETING, IT CANNOT BE SAID THAT THE MEETING WAS AN ACT, BY ANY OF THE PERSONS WHO ATTENDED THE MEETING, CONSISTENT WITH MEMBERSHIP FOLLOWING THE FORMATION OF THE RESPONDENT.

14. IN ADDITION, THE PATENT DEFECTS IN THE STEPS TAKEN TO CREATE THE RESPONDENT AND IN THE SIGNING OF MEMBERS CANNOT BE CURED SIMPLY BY CAUSING CERTAIN PERSONS (THE IDENTITY OF SUCH PERSONS IS NOT DISCLOSED IN THE MINUTES) TO VOTE IN FAVOUR OF ACCEPTING THE COLLECTIVE

AGREEMENT ON OCTOBER 6TH, 1966, WHEN THE COLLECTIVE AGREEMENT WITH WHICH WE ARE CONCERNED IN THIS APPLICATION IS THE VERY COLLECTIVE AGREEMENT WHICH WAS VOTED UPON IN THE MANNER DESCRIBED ABOVE.

15. A SUMMARY AND ANALYSIS OF THE STEPS TAKEN TO FORM THE RESPONDENT WOULD APPEAR AS FOLLOWS:

1. SEPTEMBER 6TH, 1966
THREE OFFICERS WERE APPOINTED, AND A DECISION WAS MADE TO FORM A TRADE UNION IN THE FUTURE. AT THIS STAGE NOTHING OF SUBSTANCE HAD HAPPENED WITH RESPECT TO THE FORMATION OF THE RESPONDENT.
2. SEPTEMBER 8TH, 1966
A MEETING WAS HELD AT WHICH A DECISION WAS ANNOUNCED TO FORM A TRADE UNION IN THE FUTURE. AGAIN, NOTHING OF SUBSTANCE WAS DONE TO CREATE THE RESPONDENT AS A TRADE UNION.
3. SEPTEMBER 11TH, 1966
SPECIAL REGISTRATION DAY AT WHICH 115 REGISTRATIONS WERE RECORDED. UP TO THIS STAGE THE BEST THAT CAN BE SAID IS THAT PRO TEM OFFICERS HAD BEEN APPOINTED AND 115 PERSONS HAD INDICATED THEIR INTEREST WITH RESPECT TO FORMING A TRADE UNION ON A DATE IN THE FUTURE.
4. SEPTEMBER 18TH, 1966
A MEETING WAS HELD AND 65 UNIDENTIFIED PERSONS WERE IN ATTENDANCE. THE PURPOSE OF THE MEETING AS SET FORTH IN THE MINUTES WAS TO PRESENT THE CONSTITUTION FOR ADOPTION AND TO ELECT A VICE-PRESIDENT AND SIX MEMBERS TO THE EXECUTIVE BOARD. THE ONLY THING THAT TOOK PLACE AT THIS MEETING WAS TO VOTE TO ACCEPT THE CONSTITUTION AND TO ELECT THE VICE-PRESIDENT AND SIX EXECUTIVE BOARD MEMBERS. NO STEPS WERE TAKEN WITH RESPECT TO THE MEMBERSHIP. APPARENTLY, EVERYONE ASSUMED THAT THE 115 PERSONS WERE, IN FACT, MEMBERS.
5. FINALLY, ON OCTOBER 6TH, 1966, 92 PERSONS, WHOSE IDENTITY IS UNKNOWN, BUT WHOM WE WILL ASSUME WERE 92 OF THE 115 PERSONS WHO SIGNED REGISTRATION CARDS ON SEPTEMBER 11TH, VOTED TO ACCEPT A COLLECTIVE AGREEMENT. ALL OF THE STEPS TAKEN BY THE RESPONDENT, ACCORDING TO THE EVIDENCE ADDUCED, IS SET FORTH IN THE MINUTE BOOK AND THESE STEPS DISCLOSE THAT THOSE RESPONSIBLE ACTED ON THE ASSUMPTION THAT THE APPOINTED

OFFICERS WERE DULY ELECTED AND THE PERSONS WHO INDICATED THEY WISHED TO JOIN THE UNION WHEN IT WAS FORMED AUTOMATICALLY BECAME MEMBERS UPON ITS FORMATION. THE FACT THAT THESE THINGS WERE ASSUMED TO HAVE HAPPENED DID NOT CAUSE THEM TO HAPPEN AND SUCH ASSUMPTIONS ARE NOT IN ACCORDANCE WITH THE REQUIREMENTS SET FORTH BY THE BOARD IN THE M. LOEB LIMITED CASE ABOVE REFERRED TO.

16. A TRADE UNION MUST BE IN EXISTENCE AT THE TIME IT CONFERS MEMBERSHIP ON A PERSON. SINCE THE REGISTRANTS WERE NOT CONFIRMED OR ACCEPTED AS MEMBERS AFTER THE RESPONDENT ORGANIZATION CAME INTO EXISTENCE, THE RESPONDENT THEREFORE HAD NO MEMBERS TO ADOPT OR RATIFY THE CONSTITUTION ON SEPTEMBER 18TH, 1966. THE PERSONS IN ATTENDANCE AT THAT MEETING COULD HAVE "ACCEPTED" OR APPROVED THE CONSTITUTION (AS THEY APPEARED TO DO) AND THE MEETING COULD HAVE THEN CONFIRMED THE REGISTRANTS AS MEMBERS AND THE MEMBERS COULD HAVE FINALLY ADOPTED AND RATIFIED THE CONSTITUTION. HOWEVER, THE LATTER TWO STEPS WERE NOT TAKEN.

17. IN VIEW OF OUR FINDINGS SET OUT ABOVE, IT IS APPARENT THAT THE RESPONDENT ORGANIZATION HAS NOT TAKEN THE NECESSARY STEPS TO FORM A VIABLE ENTITY WHICH IS ENTITLED TO BE RECOGNIZED BY THE BOARD AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT. IN THIS REGARD, SEE ALSO BLUE BELL CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1966, P. 809; J. HARRIS AND SONS CASE, 60 C.L.L.C. 884; COCHRANE-DUNLOP HARDWARE LIMITED CASE, 63 C.L.L.C. 1134; AND THE ABITIBI POWER & PAPER COMPANY, LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1965, P. 491.

18. IN ADDITION, THE RESPONDENT ORGANIZATION HAS NEITHER CONFIRMED THE PERSONS WHO SIGNED THE REGISTRATION CARDS AS MEMBERS IN THE RESPONDENT AFTER THE RESPONDENT WAS ALLEGED TO HAVE BEEN FORMED NOR HAVE SUCH PERSONS PERFORMED ANY ACT, SUCH AS THE PAYMENT OF MONTHLY DUES, WHICH CAN BE SAID TO BE UNEQUIVOCALLY CONSISTENT WITH MEMBERSHIP, PRIOR TO OCTOBER 6TH, 1966, THE DATE THE COLLECTIVE AGREEMENT WAS ENTERED INTO. ANY PAYMENT OF DUES WHICH OCCURRED AFTER OCTOBER 6TH, 1966 WOULD BE IN ACCORDANCE WITH THE CHECK-OFF PROVISIONS OF THE COLLECTIVE AGREEMENT AND NOT A VOLUNTARY ACT CONSISTENT WITH MEMBERSHIP AS OF OCTOBER 6TH, 1966.

19. THE BOARD THEREFORE FINDS THAT THE RESPONDENT HAS FAILED TO ESTABLISH THAT IT ENJOYED THE STATUS OF A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT ON OCTOBER 6TH, 1966.

20. THE BOARD THEREFORE DECLARES THAT SINCE THE RESPONDENT WAS NOT A TRADE UNION ON OCTOBER 6TH, 1966, THE DATE THE AGREEMENT WAS ENTERED INTO, THE PURPORTED COLLECTIVE AGREEMENT IN OPERATION BETWEEN THE RESPONDENT AND THE INTERVENER THEREFORE CEASES TO OPERATE FORTHWITH PURSUANT TO THE PROVISIONS OF SECTION 45A(4) OF THE ACT.

13975-67-R: MICHAEL DEPROSPO (APPLICANT) V. INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS, AFL, CIO, CLC (RESPONDENT).

(RE: ACME POLYGON SERVICES LTD.).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: MICHAEL DEPROSPO, GEORGE H. HEINE
FOR THE APPLICANT, J. A. RYDER, JOHN OSBORNE FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 4, 1968.

. . .

2. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.

3. THE RESPONDENT IS THE BARGAINING AGENT FOR ALL EMPLOYEES OF ACME POLYGON SERVICES LTD. IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND THOSE PERSONS COVERED BY THE CERTIFICATE BETWEEN THE RESPONDENT AND ACME POLYGON SERVICES LTD. DATED SEPTEMBER 16TH, 1966.

4. THERE WAS SUBMITTED IN SUPPORT OF THIS APPLICATION A DOCUMENT BEARING THE SIGNATURES OF MORE THAN 50% OF THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH THE RESPONDENT IS BARGAINING AGENT. AT THE HEARING, THE BOARD CONDUCTED ITS USUAL INQUIRY INTO THE ORIGINATION AND CIRCULATION OF THE DOCUMENT. THE RESPONDENT THEN ADDUCED EVIDENCE IN SUPPORT OF ITS ALLEGATIONS THAT THE DOCUMENT DID NOT REVEAL THE TRUE WISHES OF THE EMPLOYEES.

5. THE SIGNATURES OF ALL THE PERSONS WHO SIGNED THE DOCUMENT WERE WITNESSED BY MICHAEL DEPROSPO WHO GAVE TESTIMONY WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE DOCUMENT AND THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED. HE TESTIFIED THAT HE TYPED THE DOCUMENT SOME TIME IN NOVEMBER AT HIS HOME AND OBTAINED ALL THE SIGNATURES AT LUNCH TIME ON DIFFERENT DAYS THEREAFTER, SOME IN HIS CAR PARKED IN FRONT OF THE FACTORY AND OTHERS IN THE PLANT. HE STATED THAT MR. HEINE WAS WITH HIM WHEN HE OBTAINED AND WITNESSED SIGNATURES ON THE DOCUMENT IDENTIFIED AS No.'s 15, 16 AND 17. LATER HE TESTIFIED THAT HE HAD NOT IN FACT SEEN THESE PERSONS SIGN AND THAT GEORGE HEINE HAD TOLD HIM TO SIGN THE DOCUMENT AS A WITNESS. MR. HEINE, STOREKEEPER, TESTIFIED THAT IN FACT HE ALONE HAD OBTAINED THE SIGNATURES IDENTIFIED AS No.'s 15, 16 AND 17, TWO AT LUNCH TIME AND THE THIRD AT HIS MACHINE DURING WORKING HOURS. HE DENIED TALKING TO THE FOREMAN ABOUT THE DOCUMENT, HOWEVER, HE ADMITTED THAT HE HAD TOLD THESE PERSONS THAT IF THEY GOT ENOUGH SIGNATURES MAYBE THEY WOULD GET

A CHRISTMAS BONUS. IT SHOULD BE POINTED OUT THAT DEPROSPO'S TESTIMONY WITH RESPECT TO THE CIRCUMSTANCES SURROUNDING THE CIRCULATION OF THE PETITION IS CONTRADICTED BY THE TESTIMONY OF HIS OWN WITNESS AND AS WELL ON CROSS-EXAMINATION IN THIS REGARD HE CHANGED HIS PREVIOUS TESTIMONY TO THE BOARD.

6. MR. POLGAR, TESTIFIED THAT HE HAD SIGNED THE DOCUMENT AFTER COFFEE BREAK AT HIS MACHINE, AT THE REQUEST OF MR. HEINE WHO HAD TOLD HIM THAT THE UNION WAS NOT DOING ANYTHING AND THE ONLY WAY TO GET A CHRISTMAS BONUS WAS TO SIGN THE LIST. MR. DEPROSPO WAS NOT THERE WHEN HE SIGNED IT BUT OTHER EMPLOYEES INCLUDING A FOREMAN WERE PRESENT AND THE FOREMAN LATER ASKED POLGAR IF HE HAD SIGNED THE DOCUMENT. HE STATED THAT ROY COLLETTE, WHOSE SIGNATURE APPEARS AS THE FIRST ON THE DOCUMENT HAD LEFT THE EMPLOY OF THE COMPANY SOME TIME PRIOR TO OCTOBER 12TH.

7. IN CASES OF THIS NATURE, THE BOARD MUST DETERMINE "WHETHER NOT LESS THAN 50% OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING... THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION". THE BOARD SEEKS ASSURANCE BY VIVA VOCE EVIDENCE FROM PERSONS WITH FIRST HAND KNOWLEDGE THAT THE DESIRES OF THE EMPLOYEES AS REFLECTED IN THE DOCUMENT WERE SIGNIFIED VOLUNTARILY AND THAT MANAGEMENT HAS NOT INFLUENCED THEM IN ANY WAY. IN THE INSTANT CASE, WE HAVE CONFLICTS OF TESTIMONIES BETWEEN THE PERSON WHO ORIGINATED THE DOCUMENT, HIS OWN WITNESS TOGETHER WITH THE RESPONDENT'S WITNESS. THE EVIDENCE OF MR. DEPROSPO AND THE MANNER IN WHICH IT WAS GIVEN RAISES GRAVE DOUBT AS TO THE CREDENCE THAT CAN BE GIVEN TO IT. WE HAVE ALSO CONSIDERED THE ADMISSION THAT AN INDUCEMENT WAS OFFERED BY MR. HEINE TO THREE EMPLOYEES INCLUDING MR. POLGAR WHEN HE OBTAINED THEIR SIGNATURES. FROM THE EVIDENCE IT WOULD APPEAR THAT THE MANNER IN WHICH MR. HEINE SO ADVISED THESE EMPLOYEES WOULD LIKELY LEAD THEM TO BELIEVE THAT HE HAD MANAGEMENT APPROVAL FOR THE STATEMENT. FURTHERMORE, MR. POLGAR TESTIFIED THAT MR. HEINE ASKED HIM TO SIGN THE PETITION AT HIS MACHINE DURING WORKING HOURS WHEN THE FOREMAN AND OTHER EMPLOYEES WERE PRESENT. THESE ARE MATTERS WHICH WOULD LOGICALLY EFFECT EMPLOYEES IN SUCH A SITUATION SO AS TO MAKE IT IMPOSSIBLE FOR THEM TO GIVE EXPRESSION OF THEIR TRUE WISHES. AS WELL, MR. DEPROSPO, WHEN EXAMINED FURTHER WITH RESPECT TO MR. COLLETTE'S SIGNATURE, COULD NOT GIVE A SATISFACTORY ANSWER TO THE BOARD AS TO HOW OR WHEN THIS SIGNATURE WAS OBTAINED AND THE INFERENCE REMAINS THAT THE PETITION WAS PREPARED AT SOME TIME OTHER THAN AS STATED BY MR. DEPROSPO.

8. HAVING CONSIDERED ALL THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS NOT SATISFIED THAT NOT LESS THAN 50% OF THE EMPLOYEES OF ACME POLYGON SERVICES LTD. IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT UNION ON DECEMBER 15TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME

FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE ACT.

9. THE APPLICATION IS ACCORDINGLY DISMISSED.

14021-67-R: MRS. THERESA GAUDETTE (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION A.F.L. C.I.O. C.L.C. (RESPONDENT) V. NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: MRS. THERESA GAUDETTE AND HARVEY SPIEGEL FOR THE APPLICANT, H. BUCHANAN FOR THE RESPONDENT, MICHAEL STANGHETTA AND H. GARFIELD FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 22, 1968.

1. THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE INTERVENER ON NOVEMBER 29TH, 1966, AND HAS NOT BEEN ABLE TO MAKE A COLLECTIVE AGREEMENT WITH THE INTERVENER SINCE THAT TIME.

2. THE APPLICANT IN THIS MATTER APPLIED ON JANUARY 3RD, 1968 FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT UNION. IN ADDITION, ON JANUARY 3RD, 1968, THE DEPUTY MINISTER OF LABOUR WROTE TO THE RESPONDENT AND ADVISED THE RESPONDENT THAT THE MINISTER HAD APPOINTED A CONCILIATION OFFICER.

3. SECTION 46(1) OF THE ACT READS AS FOLLOWS:

46.--(1) SUBJECT TO SUBSECTION 3, WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT, NO APPLICATION FOR CERTIFICATION OF A BARGAINING AGENT OF, OR FOR A DECLARATION THAT A TRADE UNION NO LONGER REPRESENTS, THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE UNTIL,

(A) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR; OR

(B) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE

DOES NOT DEEM IT ADVISABLE TO APPOINT A
CONCILIATION BOARD; OR

- (c) SIX MONTHS HAVE ELAPSED AFTER THE MINISTER
HAS RELEASED TO THE PARTIES A NOTICE OF A
REPORT OF THE CONCILIATION OFFICER THAT THE
DIFFERENCES BETWEEN THE PARTIES CONCERNING
THE TERMS OF A COLLECTIVE AGREEMENT HAVE
BEEN SETTLED,

AS THE CASE MAY BE.

4. THE QUESTION OF HOW SECTION 46 OF THE ACT AFFECTS THIS
APPLICATION THEREFORE ARISES IN THESE CIRCUMSTANCES.

5. IN THE JOHN INGLIS CO. LIMITED CASE, BOARD FILES 13969-67-R
AND 13970-67-R, IN ITS DECISION OF DECEMBER 27TH, 1967, THE BOARD,
DEALING WITH THE QUESTION OF TIMELINESS AND PRIORITIES, STATED AS
FOLLOWS:

WHERE TWO APPLICATIONS ARE MADE ON THE SAME
DATE, THE BOARD WILL NOT DISTINGUISH BETWEEN THEM IN
POINT OF TIME SO THAT ONE OF THE APPLICANTS WILL THEREBY
GAIN AN ADVANTAGE. WHERE TWO APPLICATIONS ARE MADE ON
THE SAME DATE, THE BOARD WILL TREAT SUCH APPLICATIONS
AS HAVING BEEN MADE SIMULTANEOUSLY. WHILE IT IS THE
CUSTOM OF THE BOARD TO STAMP AN APPLICATION WITH A
DEVICE WHICH IMPRINTS ON THE APPLICATION THE TIME OF
DAY THAT IT IS RECEIVED AND PROCESSED BY THE BOARD'S
CLERKS, AND THE BOARD IS THEREFORE ABLE TO DETERMINE,
WITH SOME DEGREE OF ACCURACY, THE TIME OF DAY THE
DOCUMENT IS RECEIVED BY THE BOARD, HOWEVER, PURSUANT
TO THE PROVISIONS OF SECTION 50(1) OF THE BOARD'S
RULES OF PROCEDURE, AN APPLICATION MAY BE FILED BY
REGISTERED MAIL AND AN APPLICATION SO FILED WILL BE
DEEMED TO BE MADE AT THE TIME IT IS MAILED BY
REGISTERED MAIL. SINCE SUCH IS THE CASE, THE EXACT
TIME OF THE DAY THAT AN APPLICATION WAS MADE IS NOT
ALWAYS ACCURATELY ASCERTAINABLE BY THE BOARD.
ACCORDINGLY, IF MORE THAN ONE APPLICATION IS MADE ON
A PARTICULAR DAY, THE BOARD DOES NOT REGARD FRACTIONS
OF A DAY SO THAT PRIORITIES INTIME ATTACH TO ONE OF THE
APPLICATIONS, BUT CONSIDERS THE APPLICATIONS AS HAVING
BEEN MADE SIMULTANEOUSLY. (SEE AMPLIFONE CANADA LTD.
BOARD FILE 13675-67-R DECEMBER 4TH, 1967)

6. IN THE INSTANT CASE, WHILE THE BOARD CAN DETERMINE, WITH
SOME DEGREE OF ACCURACY, THE TIME OF DAY THAT THIS APPLICATION WAS
RECEIVED BY THE BOARD, THERE IS NO PRACTICAL WAY TO DETERMINE THE
PRECISE TIME OF DAY THE MINISTER APPOINTED THE CONCILIATION OFFICER

AT THE REQUEST OF THE RESPONDENT. IN THESE CIRCUMSTANCES, FOR REASONS SIMILAR TO THOSE SET FORTH IN THE JOHN INGLIS CO. LIMITED CASE, IN ORDER TO BE CONSISTENT WITH THE BOARD'S GENERAL PRACTICE IN OTHER CASES, IT WOULD APPEAR TO BE JUST AND EQUIPABLE TO TREAT THE APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT AND THE APPOINTMENT OF THE CONCILIATION OFFICER BY THE MINISTER AS HAVING BEEN MADE SIMULTANEOUSLY WHERE THE APPLICATION AND THE APPOINTMENT ARE MADE ON THE SAME DATE.

7. SECTION 46 OF THE ACT PROVIDES IN EFFECT THAT NO APPLICATION FOR A DECLARATION THAT A TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES OF AN EMPLOYER SHALL BE MADE WHERE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER UNTIL CERTAIN TIME LIMITATIONS HAVE ELAPSED. THIS SECTION IS CONSISTENT WITH THE SITUATION WHERE THE MINISTER HAS APPOINTED THE CONCILIATION OFFICER BEFORE THE APPLICATION IS MADE. IN THE INSTANT CASE, WE HAVE FOUND THE APPOINTMENT AND THE APPLICATION WERE MADE SIMULTANEOUSLY. ACCORDINGLY, IT CANNOT BE SAID THAT THE APPOINTMENT WAS MADE BEFORE THE APPLICATION WAS MADE. SINCE THE APPOINTMENT WAS NOT MADE BEFORE THE APPLICATION WAS MADE, IT THEREFORE FOLLOWS THAT THIS APPLICATION IN THESE CIRCUMSTANCES IS TIMELY.'

8. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS MADE TO THE BOARD, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON JANUARY 12TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE SAID ACT.

9. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS AT SAULT STE. MARIE, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, DRIVER SALESMEN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - PROSECUTION

13872-67-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CITY PARKING CANADA LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: R.B. CUMINE, J. ROBINSON. A. LEFORT, K. BATES, D. HORN AND A. THORN FOR THE APPLICANT, W.Z. ESTEY, Q.C., AND W. M. TEMPLE FOR THE RESPONDENT.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER O. HODGES: JANUARY 29, 1968.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT ON THE GROUNDS THAT AFTER NOTICE WAS GIVEN BY THE APPLICANT TO THE RESPONDENT UNDER SECTION 11 OF THE ACT, THE RESPONDENT DID ALTER RATES, TERMS AND CONDITIONS OF EMPLOYMENT WITHOUT THE CONSENT OF THE APPLICANT.
2. THE MATERIAL FACTS UPON WHICH THE APPLICANT STATES IN ITS APPLICATION THAT IT INTENDED TO RELY AS ESTABLISHING THE OFFENCE ARE AS FOLLOWS: (1) THE RESPONDENT CHANGED ITS POLICY WITH REGARD TO OVERAGES AND SHORTAGES; (2) THE RESPONDENT REQUIRED ITS EMPLOYEES TO BE BONDED; (3) THE RESPONDENT REQUIRED EMPLOYEES TO MOVE FROM ONE LOT TO ANOTHER. WHILE THE APPLICANT DID NOT SET OUT IN ITS APPLICATION THE SECTION OF THE ACT THAT IT WAS ALLEGING HAD BEEN VIOLATED BY THE RESPONDENT, IT IS CLEAR FROM THE NATURE OF THE OFFENCE ALLEGED THAT SECTION 59(1) IS THE RELEVANT SECTION OF THE ACT AND THE BOARD WAS SO ADVISED BY THE APPLICANT AT THE OUTSET OF THE HEARING.
3. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE FORM OF THE APPLICATION AND THE MATERIAL FACTS UPON WHICH THE APPLICANT STATED IT INTENDED TO RELY DO NOT DISCLOSE ANY ALLEGED OFFENCE ON THE PART OF THE RESPONDENT. AS HAS ALREADY BEEN STATED, IT IS APPARENT FROM THE APPLICATION THAT THE APPLICANT IS ALLEGING A VIOLATION OF SECTION 59(1) OF THE ACT. FURTHER, IT IS OBVIOUS THAT THE MATERIAL FACTS UPON WHICH THE APPLICANT STATED IT INTENDED TO RELY RELATE TO ACTIONS TAKEN BY THE RESPONDENT AFTER THE GIVING OF NOTICE PURSUANT TO SECTION 11. IF THE RESPONDENT WAS OF THE OPINION THAT IT WAS ENTITLED TO FURTHER PARTICULARS OF THE ALLEGED OFFENCE, IT WAS INCUMBENT ON IT TO MAKE SUCH A REQUEST PRIOR TO THE HEARING. FURTHER, IF THE RESPONDENT WAS OF THE VIEW THAT THE FORM OF THE APPLICATION DID NOT DISCLOSE ANY OFFENCE ON ITS PART IT SHOULD HAVE RAISED THIS MATTER AT THE OUTSET OF THE HEARING. THE RESPONDENT, HOWEVER, ONLY RAISED THIS MATTER AFTER ALL OF THE EVIDENCE RELATING TO THE APPLICATION HAD BEEN ADDUCED

BY THE PARTIES. IN ANY EVENT, IF THERE IS ANY MERIT IN THE SUBMISSION OF THE RESPONDENT, THE SHORTCOMINGS IN THE FORM OF THE APPLICATION ARE ONLY TECHNICAL DEFECTS AND DO NOT INVALIDATE THE PROCEEDING.

4. THERE IS NO EVIDENCE THAT SINCE THE GIVING OF NOTICE BY THE COMPLAINANT TO THE RESPONDENT ON SEPTEMBER 18TH, 1967 PURSUANT TO SECTION 11 OF THE ACT THAT THE RESPONDENT CHANGED ITS POLICY WITH REGARD TO OVERAGES AND SHORTAGES OF CASH IN RELATION TO ITS PARKING LOT ATTENDANTS. THE APPLICATION AS IT RELATES TO THE ALLEGED CHANGE IN ITS POLICY WITH RESPECT TO OVERAGES AND SHORTAGES IN CONTRAVENTION OF SECTION 59(1) OF THE LABOUR RELATIONS ACT ACCORDINGLY IS DISMISSED.

5. THE EVIDENCE OF THE PRESIDENT OF THE COMPLAINANT UNION, JACK ROBINSON, IS THAT AT A MEETING WITH MEMBERS OF THE MANAGEMENT OF THE RESPONDENT IN THE LATTER PART OF OCTOBER OF 1967 HE AGREED IN PRINCIPLE TO THE BONDING OF THE RESPONDENT'S PARKING LOT ATTENDANTS AS REQUIRED BY ITS INSURANCE COMPANY. IN THESE CIRCUMSTANCES THE BOARD IS NOT PREPARED TO CONSENT TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT FOR THE ALLEGED OFFENCE THAT THE RESPONDENT IS REQUIRING ITS PARKING LOT ATTENDANTS TO BE BONDED IN CONTRAVENTION OF SECTION 59(1) OF THE LABOUR RELATIONS ACT. THE APPLICATION AS IT RELATES TO THE RESPONDENT'S BONDING REQUIREMENTS, ACCORDINGLY, IS DISMISSED.

6. THERE ARE CONFLICTS BETWEEN THE EVIDENCE OF ALBERT THORN AND KENNETH BATES ON THE ONE HAND AND THE EVIDENCE OF MEMBERS OF MANAGEMENT OF THE RESPONDENT ON THE OTHER AS TO THE POLICY OF THE RESPONDENT IN MOVING ATTENDANTS FROM ONE PARKING LOT TO ANOTHER. THORN'S EVIDENCE IS THAT WHEN ATTENDANTS REQUESTED A PARTICULAR PARKING LOT THEY WERE GENERALLY ASSIGNED TO IT AND LEFT THERE UNLESS THEY ENCOUNTERED TROUBLES. FURTHER, THE UNDISPUTED EVIDENCE OF BOTH ALBERT THORN AND KENNETH BATES IS THAT AFTER THE GIVING OF NOTICE ON SEPTEMBER 18TH, THEY WERE MOVED FROM THE PARKING LOTS WHERE THEY HAD BEEN EMPLOYED FOR THE PREVIOUS SIX MONTHS TO OTHER LOTS. IN THE CASE OF BATES HE WAS MOVED TO A NUMBER OF DIFFERENT PARKING LOTS AFTER THE APPLICANT GAVE NOTICE TO THE RESPONDENT OF ITS DESIRE TO BARGAIN.

7. IN THESE CIRCUMSTANCES, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT CITY PARKING CANADA LIMITED FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (A) THAT AFTER THE GIVING OF NOTICE BY THE COMPLAINANT TO THE RESPONDENT ON SEPTEMBER 18TH, 1967, PURSUANT TO SECTION 11 OF THE LABOUR RELATIONS ACT, THE RESPONDENT TRANSFERRED AN EMPLOYEE KENNETH BATES, WHO WAS EMPLOYED AS A PARKING LOT ATTENDANT, FROM ONE PARKING LOT TO ANOTHER IN CONTRAVENTION OF SECTION 59(1) OF THE LABOUR RELATIONS ACT;

- (B) THAT AFTER THE GIVING OF NOTICE BY THE COMPLAINANT TO THE RESPONDENT ON SEPTEMBER 18TH, 1967, PURSUANT TO SECTION 11 OF THE LABOUR RELATIONS ACT, THE RESPONDENT TRANSFERRED AN EMPLOYEE ALBERT THORN, WHO IS EMPLOYED AS A PARKING LOT ATTENDANT, FROM ONE PARKING LOT TO ANOTHER IN CONTRAVENTION OF SECTION 59(1) OF THE LABOUR RELATIONS ACT.

8. THE APPROPRIATE DOCUMENTS WILL ISSUE FOR THE OFFENCES ALLEGED TO HAVE BEEN COMMITTED BY THE RESPONDENT CITY PARKING CANADA LIMITED AS OUTLINED IN PARAGRAPH 7.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

JANUARY 29, 1968.

I AGREE WITH THE FINDING OF MY COLLEAGUES DISMISSING THE APPLICANT'S APPLICATION AS IT RELATES TO THE COMPANY POLICY RESPECTING OVERAGES AND SHORTAGES AND AS IT RELATES TO THE COMPANY'S BONDING REQUIREMENTS.

WITH RESPECT TO THAT PORTION OF MY COLLEAGUES DECISION CONSENTING TO THE INSTITUTION OF A PROSECUTION AGAINST THE COMPANY IN REGARD TO THE MOVING OF EMPLOYEES BATES AND THORN FROM ONE PARKING LOT TO ANOTHER IN CONTRAVENTION OF SECTION 59(1) OF THE LABOUR RELATIONS ACT, I WOULD DISSENT.

THE OFFENCE ALLEGED BY THE APPLICANT IN ITS APPLICATION WAS THAT "AFTER NOTICE WAS GIVEN BY THE APPLICANT UNDER SECTION 11 OF THE ACT, THE RESPONDENT DID ALTER RATES, TERMS AND CONDITIONS OF EMPLOYMENT WITHOUT THE CONSENT OF THE APPLICANT" IN THAT "THE RESPONDENT REQUIRED EMPLOYEES TO MOVE FROM ONE LOT TO ANOTHER".

IT IS CLEAR FROM THE EVIDENCE TENDERED BY THE APPLICANT AND THE ARGUMENT THEREIN, THAT THE APPLICANT WAS RELYING ON THE PROVISIONS OF SECTION 59(1) NOTWITHSTANDING THAT NO REFERENCE WAS MADE TO THIS SECTION AS REQUIRED BY SECTION 47(1) OF THE RULES OF PROCEDURE AND REGULATIONS OF THE LABOUR RELATIONS ACT.

THE PROVISION OF SECTION 59(1) OF THE LABOUR RELATIONS ACT IS AS FOLLOWS:-

WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR SECTION 40 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO TRADE UNION SHALL,

EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES,

(A) UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT AND,

(I) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR, OR

(II) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE; OR

(B) UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED,

WHICHEVER OCCURS FIRST.

(THE UNDERLINING IS MINE)

THE PORTION OF THE SECTION ON WHICH THE APPLICANT APPEARS TO RELY IS THAT THE TERMS AND WORKING CONDITIONS OF THE EMPLOYEES WERE CHANGED AFTER NOTICE WAS GIVEN UNDER SECTION 11 OF THE LABOUR RELATIONS ACT, IN THAT THE COMPANY REQUIRED EMPLOYEES TO MOVE FROM ONE LOT TO ANOTHER.

WHAT WERE THE CONDITIONS OF EMPLOYMENT AS THEY RELATED TO THE EMPLOYEES OF THE COMPANY? IN MY OPINION THE EVIDENCE IS CLEAR AND WITHOUT CONTRADICTION. THAT ONE OF THE TERMS AND CONDITIONS OF EMPLOYMENT WAS THAT EMPLOYEES WERE REQUIRED TO MOVE FROM ONE LOT TO ANOTHER.

WHILE SECTION 59(1) OF THE LABOUR RELATIONS ACT WOULD APPEAR TO DEAL WITH THE ALTERING OF CONDITIONS OF EMPLOYMENT OF EMPLOYEES COLLECTIVELY, AS DOES THE OFFENCE ALLEGED BY THE APPLICANT, THE APPLICANT CHOSE TO CALL EVIDENCE ONLY AS IT RELATED TO TWO EMPLOYEES, THORN AND BATES. THORN SAID THAT THE MOVEMENT OF EMPLOYEES WAS LEFT TO THE COMPANY'S DISCRETION AND THAT THEY WERE MOVED FROM LOT TO LOT. BATES (WHO WAS EARLIER THE SUBJECT OF A SECTION 65 APPLICATION WHICH WAS DISMISSED BY THIS BOARD) IN HIS EVIDENCE SAID THAT HE HAD BEEN MOVED TO MOST OF THE LOTS OPERATED BY THE COMPANY IN TORONTO. HE TESTIFIED THAT DURING A FOUR YEAR PERIOD, HE HAD BEEN ON SOME TWENTY-FIVE LOTS OWNED BY THE COMPANY. IN ADDITION, HE HAD BEEN MOVED ON ONE OCCASION TO THE COMPANY LOT IN HAMILTON.

THE COMPANY CALLED A NUMBER OF WITNESSES TO ESTABLISH, INTER ALIA, THAT IT WAS A CONDITION OF EMPLOYMENT THAT EMPLOYEES WERE MOVED FROM ONE LOT TO ANOTHER. JOSEPH CROUCH, WHO HAD APPROXIMATELY TWENTY-SEVEN YEARS OF SERVICE WITH THE COMPANY, TESTIFIED THAT THIS HAD BEEN THE POLICY OF THE COMPANY SINCE HE HAD COMMENCED HIS EMPLOYMENT. HIS EVIDENCE WAS THAT HE HAD WORKED ON EVERY LOT IN THE CITY OF TORONTO (WHICH APPROXIMATE SEVENTY IN NUMBER). HE SAID THAT SOMETIMES THE MOVES WERE FREQUENT, SOMETIMES THEY WERE NOT, BUT THAT EMPLOYEES HAVE ALWAYS BEEN MOVED AROUND.

JOSEPH BURCH, THE OPERATIONS MANAGER, WHO CAME TO THE COMPANY IN MAY OF 1967, GAVE EVIDENCE THAT ATTENDANTS WERE MOVED FROM LOT TO LOT THEN, AND THE COMPANY WAS STILL DOING SO NOW; THERE HAD BEEN ABSOLUTELY NO CHANGE IN THE COMPANY POLICY. WHILE BURCH HAS ONLY BEEN EMPLOYED BY THE RESPONDENT SINCE MAY OF 1967, HE HAS EXTENSIVE SUPERVISORY EXPERIENCE IN THE INDUSTRY IN THE U.S.A., AND THE POLICY OF THE INDUSTRY GENERALLY IS THAT EMPLOYEES ARE MOVED FROM LOT TO LOT.

THE LAST WITNESS CALLED BY THE COMPANY WAS JOHN WALKER, ITS GENERAL MANAGER. IN ADDITION TO HIS EXPERIENCE WITH THE RESPONDENT IN TORONTO FOR A NUMBER OF YEARS, WALKER TESTIFIED THAT HE HAD HAD MANY YEARS EXPERIENCE IN THE PARKING LOT BUSINESS BOTH IN CANADA AND THE UNITED KINGDOM. IN ADDITION HE HAD BEEN ENGAGED IN A CONSULTING PRACTICE IN REGARDS TO PARKING, HAD BEEN DEPUTY CITY TRAFFIC ENGINEER FOR THE CITY OF TORONTO, HAD ESTABLISHED THE PARKING AUTHORITY FOR THE CITY OF TORONTO, AND HAD BEEN CONSULTED BY SUCH AS THE TORONTO DOMINION CENTRE, C.N.R., C.P.R., CANADIAN IMPERIAL BANK OF COMMERCE WITH REGARD TO PROBLEMS RESPECTING PARKING LOTS. HIS EVIDENCE WAS THAT NOT ONLY WAS IT A CONDITION OF EMPLOYMENT AT THE RESPONDENT COMPANY THAT EMPLOYEES WERE MOVED FROM ONE LOT TO ANOTHER, BUT IT WAS A CONDITION OF EMPLOYMENT IN THE INDUSTRY AS A WHOLE AND WAS PRACTISED EVERYWHERE.

ACCORDINGLY, I AM ABLE TO COME TO ONLY ONE CONCLUSION FROM THE EVIDENCE TENDERED BY BOTH THE APPLICANT AND THE RESPONDENT. THAT CONCLUSION IS THAT IT WAS THE PRACTICE OF THIS COMPANY, BOTH BEFORE AND AFTER NOTICE WAS GIVEN UNDER SECTION 11 OF THE ACT, TO MOVE EMPLOYEES FROM ONE LOT TO ANOTHER. THIS PRACTICE OF MOVEMENT WAS NOT RESTRICTED TO THIS COMPANY, BUT IS A CONDITION PRESENT IN ALL PARKING LOT BUSINESSES.

THAT BEING SO, I FIND THAT NOT ONLY IS THIS APPLICATION COMPLETELY WITHOUT FOUNDATION, BUT THAT IT VERGES ON ABSURDITY.

I MAY SAY THAT I WOULD HAVE HAD CONSIDERABLY MORE DIFFICULTY, IF THE COMPANY HAD ABANDONED ITS HITHERTO ROUTINE PRACTICE OF MOVING EMPLOYEES FROM ONE LOT TO ANOTHER, AND HAD CEASED SUCH MOVEMENT AFTER NOTICE HAD BEEN GIVEN UNDER SECTION 11 OF THE LABOUR RELATIONS ACT.

IN THE CIRCUMSTANCES OF THIS CASE, HOWEVER, I HAVE NO
HESITATION IN DISMISSING THE APPLICATION.

13886-67-U: CITY PARKING CANADA LIMITED (APPLICANT) v. WAREHOUSEMEN
AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: W. Z. ESTEY, Q.C., AND W. M. TEMPLE
FOR THE APPLICANT, R. B. CUMINE AND J. ROBINSON FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER
O. HODGES: JANUARY 30, 1968.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO
INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN OFFENCE UNDER
THE ACT. THE ALLEGED OFFENCE IS THAT THE RESPONDENT, AFTER GIVING
NOTICE OF ITS DESIRE TO BARGAIN UNDER SECTION 11, HAS NOT BARGAINED
IN GOOD FAITH AS REQUIRED UNDER SECTION 12 OF THE ACT.

2. IN ITS APPLICATION UNDER THE HEADING "THE MATERIAL FACTS
UPON WHICH THE APPLICANT INTENDS TO RELY AS ESTABLISHING THE
OFFENCE ARE AS FOLLOWS", THE APPLICANT MADE THE STATEMENT SET OUT
BELOW:

THE APPLICANT RECEIVED NOTICE FROM THE RESPONDENT OF
ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE
AGREEMENT PURSUANT TO SECTION 11 OF THE LABOUR RELATIONS
ACT, ON OR ABOUT THE 18TH OF SEPTEMBER, 1967. THE RESPONDENT
MET WITH THE APPLICANT ON THE 17TH DAY OF OCTOBER, 1967
AND THE 31ST DAY OF OCTOBER, 1967 FOR THE PURPOSE OF
NEGOTIATING. BEFORE NEGOTIATIONS WERE COMPLETED AND ALSO
BEFORE APPLICATION FOR CONCILIATION SERVICES WAS MADE BY
EITHER PARTY, THE RESPONDENT CAUSED A STRIKE VOTE TO BE
TAKEN AMONGST ITS MEMBERSHIP. AT THE CONCLUSION OF THE
SAID MEETING ON THE 31ST DAY OF OCTOBER, 1967, THE RESPONDENT
AND THE APPLICANT AGREED TO MEET AGAIN FOR FURTHER NEGOTIATIONS
ON NOVEMBER 10TH, 1967. ACCORDINGLY, THE RESPONDENT HAS
NOT BARGAINED IN GOOD FAITH AS REQUIRED BY THE SAID LABOUR
RELATIONS ACT.

3. JOHN WALKER, THE GENERAL MANAGER OF THE APPLICANT, WAS THE
ONLY WITNESS CALLED TO GIVE EVIDENCE IN SUPPORT OF THE OFFENCE
ALLEGED BY THE APPLICANT. HE TESTIFIED THAT THE RESPONDENT UNION
GAVE WRITTEN NOTICE OF ITS DESIRE TO BARGAIN BY A LETTER TO THE
RESPONDENT DATED SEPTEMBER 18TH, 1967. ENCLOSED WITH THE LETTER

WERE TWO COPIES OF THE UNION'S PROPOSED COLLECTIVE AGREEMENT FOR THE CONSIDERATION OF THE APPLICANT. THE UNION IN ITS LETTER REQUESTED THAT THE COMPANY NOTIFY J. ROBINSON, THE PRESIDENT OF THE RESPONDENT UNION, OF A SUITABLE DATE UPON WHICH THE PARTIES COULD COMMENCE NEGOTIATIONS. BY LETTER DATED SEPTEMBER 19TH, 1967, A. J. BURCH, THE OPERATIONS MANAGER OF THE APPLICANT, ACKNOWLEDGED RECEIPT OF THE UNION'S LETTER OF THE PREVIOUS DAY. BY LETTER DATED OCTOBER 2ND, BURCH ADVISED ROBINSON THAT THE UNION'S PROPOSED COLLECTIVE AGREEMENT WAS UNSUITABLE TO THE APPLICANT'S OPERATIONS AND WAS NOT ACCEPTABLE TO THE COMPANY. BY LETTER DATED OCTOBER 4TH, ROBINSON, IN EFFECT, MAINTAINED THAT THE UNION'S PROPOSALS WERE REASONABLE AND STATED THAT THE UNION WAS PREPARED TO MEET WITH THE COMPANY AND BARGAIN IN GOOD FAITH WITH A VIEW TO CONCLUDING A COLLECTIVE AGREEMENT. BY LETTER DATED OCTOBER 10TH, BURCH ADVISED ROBINSON THAT HE WISHED TO KNOW WHEN THE UNION WAS PREPARED TO MEET AS THE COMPANY WAS PREPARED TO ACCEPT AT FACE VALUE ROBINSON'S ASSURANCE THAT THE UNION INTENDED TO BARGAIN IN GOOD FAITH. REPRESENTATIVES OF THE COMPANY AND THE UNION DID HOLD TWO BARGAINING SESSIONS, ONE ON OCTOBER 17TH AND THE OTHER ON OCTOBER 31ST, 1967. A THIRD MEETING WAS SCHEDULED FOR NOVEMBER 10TH. WALKER TESTIFIED, HOWEVER, THAT AT THE END OF THE OCTOBER 31ST MEETING ROBINSON INDICATED THAT THE UNION INTENDED TO APPLY FOR CONCILIATION SERVICES. IN FACT, ON NOVEMBER 1ST, THE UNION DID REQUEST THE MINISTER TO APPOINT A CONCILIATION OFFICER TO CONFER WITH THE PARTIES IN AN ENDEAVOUR TO EFFECT A COLLECTIVE AGREEMENT.

4. BY LETTER DATED NOVEMBER 6TH, 1967, THE APPLICANT WROTE TO THE MINISTER. THE BODY OF THAT LETTER READS AS FOLLOWS:

ON THE 3RD DAY OF NOVEMBER LAST, WE SENT YOU OUR REPLY TO THE APPLICATION BY THE TEAMSTERS FOR CONCILIATION SERVICES WITH RESPECT TO CITY PARKING CANADA LIMITED. AT THAT TIME, WE POINTED OUT TO YOU THAT THIS APPLICATION WAS PREMATURE AND THAT THERE HAD BEEN NO REAL OPPORTUNITY FOR COLLECTIVE NEGOTIATIONS. IN FACT, THERE HAD BEEN ONLY TWO MEETINGS AND A THIRD HAD BEEN SCHEDULED FOR NOVEMBER 10TH.

WE ATTACH HERETO AN EXCERPT FROM THE GLOBE & MAIL PUBLISHED UNDER DATE 6TH NOVEMBER, 1967 WHICH INDICATES THAT THE TRADE UNION HAS ALREADY SEEN FIT TO CONDUCT A STRIKE VOTE. THIS, OF COURSE, HAS BEEN DONE BEFORE THEY HAVE SERIOUSLY DIRECTED THEIR MINDS TO NEGOTIATIONS AND BEFORE YOUR DEPARTMENT HAS HAD AN OPPORTUNITY TO CONSIDER THE REQUEST FOR CONCILIATION. IT IS A SERIOUS QUESTION WHETHER A PARTY TO NEGOTIATIONS CAN NEGOTIATE IN GOOD FAITH BEFORE OR DURING CONCILIATION BY COMMENCING THE OPERATION WITH A STRIKE VOTE.

IN THE HOPE OF RETURNING THE PARTIES TO NEGOTIATION BEFORE THERE IS A COMPLETE BREAKDOWN, WE TRUST YOUR DEPARTMENT WILL DEAL WITH THE APPLICATION FOR CONCILIATION

SERVICES AND OUR RESPONSE IMMEDIATELY AND IN THIS CONNECTION, WE WOULD HOPE THAT YOU WILL DIRECT THE PARTIES TO CONTINUE NEGOTIATIONS IN GOOD FAITH BEFORE ONE OR THE OTHER PREJUDGES THE SITUATION AND EITHER TAKES A STRIKE VOTE OR APPLIES PREMATURELY FOR CONCILIATION SERVICES. A CONTINUATION OF THE PRESENT SITUATION IS SIMPLY A DENIAL OF THE PURPOSES AND PROCEDURES OF THE LABOUR RELATIONS ACT OF ONTARIO.

5. ON NOVEMBER 9TH, BURCH HAD DELIVERED TO ROBINSON A LETTER, THE CONTENTS OF WHICH READ:

PLEASE BE ADVISED THAT OUR SOLICITORS ARE OF THE OPINION THAT THERE WOULD BE NO POINT IN HOLDING THE SCHEDULED BARGAINING MEETING ON 10TH NOVEMBER SINCE IT WOULD BE PRACTICALLY IMPOSSIBLE TO BARGAIN IN GOOD FAITH WHILE BOTH PARTIES ARE AWAITING A DECISION OF THE MINISTER OF LABOUR ON YOUR APPLICATION FOR THE APPOINTMENT OF A CONCILIATION OFFICER, AND SINCE IN THE MEANTIME YOU ARE REPORTED TO HAVE CONDUCTED A STRIKE VOTE.

OUR SOLICITORS ARE OF THE OPINION THAT WE SHOULD AWAIT THE DECISION OF THE MINISTER OF LABOUR CONCERNING APPOINTMENT OF A CONCILIATION OFFICER, TO WHICH YOU ARE AWARE WE HAVE OBJECTED, BEFORE SCHEDULING THE THIRD BARGAINING MEETING. I TRUST YOU WILL INFORM MR. PETER ZAMBRIE ACCORDINGLY.

6. THE MEETING BETWEEN THE PARTIES SCHEDULED FOR NOVEMBER 10TH ACCORDINGLY DID NOT TAKE PLACE. ON NOVEMBER 9TH, HOWEVER, THE MINISTER APPOINTED A CONCILIATION OFFICER TO CONFER WITH THE PARTIES. ON NOVEMBER 13TH, THE COMPANY FILED THE INSTANT APPLICATION.

7. WALKER IDENTIFIED TWO NEWSPAPER CLIPPINGS, WHICH, ACCORDING TO HIS TESTIMONY, HE HAD SEEN IN THE NOVEMBER 6TH ISSUES OF THE GLOBE & MAIL AND THE TORONTO TELEGRAM. THE GLOBE & MAIL CLIPPING READS:

LOT ATTENDANTS VOTE TO STRIKE
AT CITY PARKING

PARKING LOT ATTENDANTS, BARGAINING FOR THEIR FIRST CONTRACT WITH CITY PARKING (CANADA) LTD., YESTERDAY VOTED TO STRIKE.

THE 110 ATTENDANTS, MEMBERS OF LOCAL 419 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, SET NO DEADLINE. THE CONTRACT DISPUTE IS EXPECTED TO GO BEFORE A CONCILIATION OFFICER THIS WEEK.

THE UNION IS ASKING THE COMPANY FOR A 40-HOUR WEEK AND A RAISE IN PAY TO \$2.60 AN HOUR. THE COMPANY HAS OFFERED A 60-HOUR WEEK WITH A \$1.80 HOURLY MINIMUM. ACCORDING TO THE UNION THE MEN ARE CURRENTLY WORKING ANYWHERE FROM 80 TO 90 HOURS A WEEK AND THE PAY SCALE RANGES FROM \$1.45 TO \$1.75 AN HOUR.

THE TORONTO TELEGRAM CLIPPING READS:

TOWING COMPANIES' DREAM

THE SPECTRE OF DOWNTOWN TORONTO BECOMING ONE VAST PARKING LOT TAKES FORM TODAY, AS ABOUT 110 CITY PARKING (CANADA) LTD. ATTENDANTS HAVE AGREED 99 PER CENT TO STRIKE. THE MEN, MEMBERS OF THE TEAMSTERS LOCAL 419, NOW AVERAGE AROUND \$1.60 AN HOUR AND ARE DEMANDING \$2.60. THEY WANT A 40-HOUR WEEK, INSTEAD OF, THEY SAY, THE 80 AND 90 HOUR WEEK THEY NOW PUT IN. THE DISPUTE GOES TO A CONCILIATION OFFICER THIS WEEK SO ANY LEGAL STRIKE IS BETTER THAN A MONTH AWAY. A STRIKE WOULD CLOSE ABOUT 70 CITY LOTS.

WALKER FURTHER TESTIFIED THAT HE ASKED A PARKING LOT ATTENDANT WHETHER THE UNION HAD HELD A STRIKE VOTE AND RECEIVED AN AFFIRMATIVE REPLY.

8. WE ARE NOT PREPARED TO ACCEPT THE ABOVE PRESS CLIPPINGS IDENTIFIED BY WALKER TAKEN IN CONJUNCTION WITH WALKER'S INQUIRY OF AN ATTENDANT AS BEING EVIDENCE THAT THE UNION TOOK A STRIKE VOTE. THE LACK OF EVIDENCE IN ITSELF IS SUFFICIENT BASIS UPON WHICH TO DISMISS THE APPLICATION.

9. LET US ASSUME, HOWEVER, FOR PURPOSES OF ARGUMENT ONLY, THAT THE EVIDENCE SUBMITTED BY THE APPLICANT DOES ESTABLISH THAT A "STRIKE VOTE" WAS TAKEN BY THE RESPONDENT. THERE IS NO EVIDENCE AS TO THE CONDITIONS UNDER WHICH THE MEMBERS OF THE RESPONDENT GAVE AUTHORITY TO ITS OFFICERS TO CALL A STRIKE. CERTAINLY THERE IS NO EVIDENCE TO SUGGEST THAT THE MEMBERSHIP AUTHORIZED THE CALLING OF AN UNLAWFUL STRIKE. FURTHER THERE IS NO EVIDENCE THAT THE UNION IN ANY WAY SUGGESTED DURING ITS TWO BARGAINING SESSIONS WITH THE COMPANY THAT IT WAS GOING TO ENGAGE IN AN UNLAWFUL STRIKE IN ORDER TO SECURE ACCEPTANCE OF ITS PROPOSALS. IN SHORT, THERE IS NO EVIDENCE WHATSOEVER OF BAD FAITH BARGAINING ON THE PART OF THE RESPONDENT.

10. THE BOARD ACCORDINGLY FINDS THAT THE APPLICATION OF THE APPLICANT ALLEGING THAT THE RESPONDENT HAS FAILED TO BARGAIN IN GOOD FAITH IN ACCORDANCE WITH THE PROVISIONS OF SECTION 12 IS WITHOUT FOUNDATION.

11. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

JANUARY 30, 1968.

I AM IN AGREEMENT WITH MY COLLEAGUES THAT THIS APPLICATION MUST BE DISMISSED. I MAKE THIS FINDING ON THE BASIS THAT THE EVIDENCE TENDERED BY THE APPLICANT, TO PROVE THAT A STRIKE VOTE TOOK PLACE AMONG THE EMPLOYEES, FALLS SHORT OF THAT EVIDENCE NECESSARY TO PROVE SUCH A FACT BEFORE THIS BOARD.

I MUST SAY, HOWEVER, THAT I AM COMPLETELY CONFOUNDED AS TO WHY MY COLLEAGUES DEEM IT NECESSARY TO QUOTE THE ALLEGED NEWSPAPER CLIPPINGS IN THE MAJORITY DECISION, WHEN THEY MAKE A FINDING THAT THE FACTS THEREIN ARE NOT PROVED.

I MUST SAY ALSO, THAT I MIGHT WELL HAVE COME TO A DIFFERENT CONCLUSION AS TO THE RESULT IN THIS APPLICATION IF THERE HAD BEEN SUFFICIENT PROOF BEFORE THE BOARD THAT A STRIKE VOTE HAD, IN FACT, TAKEN PLACE AMONGST THE EMPLOYEES.

13954-67-U: AUBIN PLUMBING & HEATING LIMITED (APPLICANT) V. MARCEL ROUSSEAU, WILLIAM MALLETTE, AURELE MALLETTE, EMILE GOUDREAU, TOM PETRYNA, JOSEPH GASCON, NORM BOULARD, WAYNE MITCHELL, AURELE LALANDE, GERRY MORIN AND ROGER LALONDE (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: LLOYD J. VALIN, Q.C. AND J. AUBIN FOR THE APPLICANT, JOSEPH HECTOR GASCON APPEARING FOR HIMSELF, AND NO ONE APPEARING FOR THE OTHER RESPONDENTS.

DECISION OF THE BOARD: JANUARY 24, 1968.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE NAMED RESPONDENTS FOR ENGAGING IN AN ALLEGED UNLAWFUL STRIKE.

2. HAVING REGARD TO THE REPRESENTATIONS OF COUNSEL FOR THE APPLICANT, THIS APPLICATION IS DISMISSED IN SO FAR AS IT RELATES TO WILLIAM MALLETTE, AURELE MALLETTE AND TOM PETRYNA.

3. HAVING REGARD TO THE EVIDENCE AND TO THE REPRESENTATIONS OF THE PARTIES, THIS APPLICATION IS ALSO DISMISSED WITH RESPECT TO JOSEPH GASCON.

4. THE APPLICATION IN QUESTION WAS FILED WITH THE BOARD ON DECEMBER 4, 1967 AND WAS ORIGINALLY SCHEDULED FOR HEARING ON DECEMBER 27, 1967. THAT HEARING WAS ADJOURNED ON CONSENT OF ALL PARTIES TO JANUARY 16, 1968. REPLIES WERE NOT FILED BY ANY OF THE NAMED RESPONDENTS. ON JANUARY 15, 1968, THE DAY BEFORE THE POSTPONED HEARING, THE BOARD RECEIVED A LETTER FROM ONE OF THE RESPONDENTS,

AURELE LALANDE, ASKING THAT THE HEARING BE FURTHER POSTPONED UNTIL FEBRUARY 20, 1968 DUE TO THE FACT THAT HE WAS "FINANCIALLY UNABLE TO ATTEND". AS NOTED ABOVE, THIS RESPONDENT DID NOT FILE A REPLY AND MADE NO REQUEST TO THE BOARD THAT THE HEARING BE HELD IN SUDBURY, HIS PLACE OF RESIDENCE. HAVING REGARD TO THESE FACTS AND TO THE LENGTH OF TIME WHICH HAD ELAPSED BETWEEN THE DATE THE APPLICATION WAS FILED AND THE DATE OF THE HEARING AND, FURTHER, TO THE TIME AT WHICH THE REQUEST WAS RECEIVED BY THE BOARD (THE DAY BEFORE THE HEARING), THE BOARD WAS OF THE OPINION THAT LALANDE WAS NOT ENTITLED TO RELIEF AND, ACCORDINGLY, NOTIFIED HIM BY TELEGRAM THAT A POSTPONEMENT WOULD ONLY BE GRANTED ON THE JOINT CONSENT OF ALL PARTIES. NO SUCH CONSENT WAS FILED AND, ACCORDINGLY, THE HEARING PROCEEDED ON JANUARY 16TH.

5. ON AN APPLICATION FOR CONSENT TO PROSECUTE, AN APPLICANT IS NOT REQUIRED TO ESTABLISH THAT A RESPONDENT IS GUILTY OF AN OFFENCE. IT IS SUFFICIENT TO ESTABLISH, BROADLY SPEAKING, A PRIMA FACIE CASE. KEEPING THIS FACT IN MIND AND HAVING REGARD TO ALL OF THE EVIDENCE BEFORE THE BOARD INCLUDING THAT OF JOSEPH GASCON, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST MARCEL ROUSSEAU, EMILE GOUDREAU, NORM BOULARD, WAYNE MITCHELL, AURELE LALANDE, GERRY MORIN AND ROGER LALONDE FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID MARCEL ROUSSEAU, EMILE GOUDREAU, NORM BOULARD, WAYNE MITCHELL, AURELE LALANDE, GERRY MORIN AND ROGER LALONDE DID AT THE APPLICANT'S SLURRY PLANT PROJECT AT FALCONBRIDGE NICKEL MINES LIMITED IN FALCONBRIDGE, ONTARIO, CONTRAVENE SECTION 54(1) OF THE LABOUR RELATIONS ACT IN THAT BEING EMPLOYEES OF THE APPLICANT BOUND BY A COLLECTIVE AGREEMENT, AND WHILE THE COLLECTIVE AGREEMENT WAS IN OPERATION, THEY DID ENGAGE IN A STRIKE, COMMENCING ON OR ABOUT NOVEMBER 30TH, 1967.

6. THE APPROPRIATE DOCUMENTS OF CONSENT WILL ISSUE.

INDEXED ENDORSEMENT - PROSECUTION (HOSPITAL ARBITRATION ACT)

2-67-PH: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U. (APPLICANT) v. CENTRE GREY GENERAL HOSPITAL (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: J. M. ASKIN, R. BUTT AND MRS. JEAN McFADDEN FOR THE APPLICANT AND N.L. MATHEWS, Q.C. AND J. HIGGINS FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 30, 1968.

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2. THIS IS AN APPLICATION UNDER SECTION 11 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965 FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR AN ALLEGED VIOLATION OF SECTION 10 OF THE ACT.

3. THE APPLICANT WAS CERTIFIED ON NOVEMBER 10, 1967 AS THE BARGAINING AGENT OF ALL EMPLOYEES OF THE RESPONDENT AT MARKDALE SAVE AND EXCEPT, INTER ALIA, "SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR..."

4. THE APPLICANT ALLEGES THAT THE RESPONDENT REDUCED THE WAGES OF AN EMPLOYEE WITHOUT ITS CONSENT. ONE OF THE DEFENCES RAISED BY THE RESPONDENT IS THAT THE EMPLOYEE IN QUESTION IS NOT IN THE BARGAINING UNIT FOR WHICH THE APPLICANT IS THE BARGAINING AGENT AND THAT THE SAID SECTION 10 HAS NO APPLICATION TO SUCH EMPLOYEE. MORE SPECIFICALLY, THE RESPONDENT CONTENTS THAT THE EMPLOYEE WHOSE WAGES IT IS ALLEGED WERE REDUCED WAS A FOOD OR KITCHEN SUPERVISOR AND WAS THUS EXCLUDED FROM THE BARGAINING UNIT. THE APPLICANT CONTENTS THAT IT WAS NOT ITS UNDERSTANDING THAT THE SAID EMPLOYEE WAS EXCLUDED BY THE TERM "SUPERVISOR".

5. IF THE EMPLOYEE IN QUESTION IS NOT INCLUDED IN THE BARGAINING UNIT (FOR WHATEVER REASON), THEN, QUITE CLEARLY, THE APPLICANT CANNOT RELY ON SECTION 10 OF THE ACT. IT IS NOT, HOWEVER, FOR THIS DIVISION OF THE BOARD TO MAKE SUCH A DETERMINATION. IF THIS MATTER IS REVIEWABLE, THEN IT IS ONE FOR THE DIVISION WHICH HEARD THE ORIGINAL CERTIFICATION APPLICATION.

6. IN THE ABOVE CIRCUMSTANCES, WE FIND THAT THIS APPLICATION IS AT THE VERY LEAST PREMATURE AND IT IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

13561-67-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION, (COMPLAINANT)
V. HI WAY MARKET LIMITED. (RESPONDENT)

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: IAN G. SCOTT AND CLIFF EVANS FOR THE COMPLAINANT, AND D. CHURCHILL-SMITH AND A. G. WALTON FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 8, 1968.

1. THIS IS A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, RONALD PARKS, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO CERTAIN PROVISIONS OF THE LABOUR RELATIONS ACT.
2. MR. PARKS WAS HIRED BY THE RESPONDENT COMPANY IN AUGUST OR SEPTEMBER OF 1966. THE COMPLAINANT TRADE UNION HAS BEEN CARRYING ON AN ORGANIZATIONAL CAMPAIGN OF THE EMPLOYEES OF THE RESPONDENT SINCE THE SPRING OF 1967. ON JULY 7TH, 1967, MR. PARKS WAS DISCHARGED BY THE RESPONDENT. SUBSEQUENTLY, AND FOLLOWING THE INSTITUTION OF PROCEEDINGS UNDER THE LABOUR RELATIONS ACT, HE WAS REINSTATED IN HIS EMPLOYMENT. WE DRAW NO INFERENCE FROM THE FACT OF THE SETTLEMENT OF THAT MATTER. ON AUGUST 14TH MR. PARKS WAS AGAIN DISCHARGED, AND HIS DISCHARGE ON THE LATTER OCCASION HAS GIVEN RISE TO THESE PROCEEDINGS.
3. THE DISCHARGE WAS BASED ON CERTAIN CONDUCT OF MR. PARKS ON AUGUST 9TH, 1967. ON THE MORNING OF THAT DAY, MR. PARKS WAS SICK. HE CAUSED NOTICE TO BE GIVEN TO THE RESPONDENT THAT HE WOULD NOT BE IN TO WORK, AND HE SPENT THE MORNING IN BED. HE ALSO ADVISED AN OFFICIAL OF THE COMPLAINANT TRADE UNION, WITH WHOM HE HAD BEEN ASSOCIATED IN THE ORGANIZATIONAL CAMPAIGN, THAT HE WOULD NOT BE ABLE TO MEET HIM THAT DAY AS PREVIOUSLY ARRANGED. IN THE EARLY AFTERNOON, HOWEVER, THE ORGANIZER CALLED ON MR. PARKS TO SEE HOW HE WAS. HE PERSUADED HIM TO GET UP, HAVE SOMETHING TO EAT, AND GO OUT FOR A DRIVE. MR. PARKS AND THE ORGANIZER THEN CALLED ON ANOTHER EMPLOYEE OF THE RESPONDENT AND HIS WIFE, AND SPENT SOME TIME WITH THEM, DISCUSSING UNION MATTERS. AT THE END OF THE AFTERNOON, THE ORGANIZER DROVE MR. PARKS HOME, AND LATER THAT AFTERNOON MR. PARKS CALLED ON HIS GIRL FRIEND.
4. THESE FACTS WERE NOT KNOWN TO THE RESPONDENT COMPANY. THE COMPANY WAS, HOWEVER, ADVISED THAT MR. PARKS HAD CALLED UPON ANOTHER EMPLOYEE AT A TIME WHEN HE WAS SUPPOSED TO HAVE BEEN SICK. HAVING CONSIDERED THIS, AND HAVING OBTAINED LEGAL ADVICE, THEY INTERVIEWED MR. PARKS. THEY DID NOT, HOWEVER, CONFRONT HIM WITH THE INFORMATION THEY HAD RECEIVED. RATHER THEY INQUIRED WHERE HE HAD BEEN ON THE DAY IN QUESTION. HE REPLIED, ACCORDING TO THEIR EVIDENCE, THAT HE HAD BEEN SICK AND HOME ALL DAY. HIS REPLY, OF COURSE, WAS ONLY HALF TRUE, ALTHOUGH IT IS UNDERSTANDABLE THAT HE MAY HAVE WISHED TO CONCEAL HIS UNION ACTIVITY FROM HIS EMPLOYER. IN FACT, IT WOULD NOT HAVE BEEN NECESSARY FOR HIM TO DISCLOSE THE NATURE OF HIS BUSINESS DURING THE AFTERNOON OF AUGUST 9TH. HE COULD HAVE REPLIED, WITH GREATER CANDOUR, THAT HE HAD BEEN SICK, BUT THAT HE HAD BEEN

ABLE TO GET UP IN THE AFTERNOON AND GO OUT ON BUSINESS OF HIS OWN. HE DID NOT, HOWEVER, MAKE SUCH A REPLY, BUT STUCK TO HIS STORY THAT HE HAD BEEN SICK AND HOME ALL DAY. HE WAS DISCHARGED FOR DISHONESTY.

5. THERE IS NO DOUBT, ON THE EVIDENCE, THAT THE COMPANY WAS AWARE OF ORGANIZATIONAL ACTIVITY AMONG ITS EMPLOYEES, AND THAT IT KNEW THAT MR. PARKS WAS ACTIVE ON BEHALF OF THE UNION. IT MAY BE THAT THE OFFICIALS OF THE COMPANY WERE UNDER THE IMPRESSION THAT MR. PARKS HAD NOT BEEN SICK AT ALL, BUT HAD SIMPLY TAKEN TIME OFF WORK IN ORDER TO ENGAGE IN ACTIVITIES ON BEHALF OF THE UNION. SUCH, HOWEVER, WAS NOT IN FACT THE CASE. HAVING REGARD TO ALL OF THE EVIDENCE, AND ON THE BALANCE OF PROBABILITIES, IT IS OUR CONCLUSION THAT THE COMPANY OFFICIALS SEIZED UPON THIS OCCASION AS PROVIDING COLORABLE GROUNDS FOR DISCHARGING MR. PARKS. BEING, NATURALLY, LOATH TO DISCLOSE HIS UNION ACTIVITY, HE ALLOWED HIMSELF TO BECOME THE VICTIM OF THE PROCEDURE FOLLOWED BY THE COMPANY. WHILE WE DO NOT CONDONE THE CONDUCT OF MR. PARKS, THIS DOES NOT ALTER THE CONCLUSION WHICH WE HAVE REACHED, NAMELY, THAT THE REAL REASON FOR MR. PARKS' DISCHARGE WAS HIS UNION ACTIVITY. IN THE CIRCUMSTANCES, WE ARE NOT PREPARED TO MAKE AN ORDER FOR COMPENSATION FOR LOSS, WHICH, BY HIS OWN CONDUCT, MR. PARKS HAS TO A DEGREE BROUGHT ON HIMSELF.

6. COUNSEL FOR THE RESPONDENT ARGUED THAT FOR THE BOARD TO GRANT THE RELIEF SOUGHT WOULD TANTAMOUNT TO GRANTING IMMUNITY FROM THE CONSEQUENCES OF THEIR MISDEMEANOURS TO EMPLOYEES WHO HAD BEEN ACTIVE IN A UNION CAMPAIGN. THE BOARD DOES NOT, OF COURSE, ENDORSE SUCH A RESULT. THE EXERCISE OF MANAGEMENT'S DISCIPLINARY FUNCTION IS NOT, AS SUCH, A MATTER WITH WHICH THIS BOARD MAY DEAL. OUR CONCERN IS ONLY WITH THE QUESTION WHETHER, HAVING REGARD TO THE EVIDENCE PRESENTED, THE AGGRIEVED PERSON WAS DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT.

7. THE BOARD FINDS THAT RONALD PARKS WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE LABOUR RELATIONS ACT. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY RONALD PARKS TO THE SAME OR LIKE EMPLOYMENT, WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD AND RECEIVED PRIOR TO AND UP TO THE TIME OF HIS DISCHARGE OF AUGUST 14TH, 1967.

DISSENT OF BOARD MEMBER OLIVER HODGES

JANUARY 8, 1968.

I DISSENT. I WOULD HAVE AWARDED COMPENSATION FOR LOSS.

PARKS DID THE ACCEPTED THING WHEN HE HAD HIS EMPLOYER NOTIFIED BEFORE STARTING TIME ON THE DAY HE WAS ILL, THAT HE WOULD BE OFF WORK. TO SUGGEST NOW WHAT ANSWER HE COULD HAVE GIVEN AND

STILL NOT HAVE TOLD A HALF TRUTH TO PROTECT HIMSELF IS AN UN-REASONABLE HYPOTHESIS. WE DON'T KNOW WHAT FURTHER QUESTIONS MIGHT THEN HAVE BEEN ASKED OF HIM. ANYWAY, TOO MUCH IS EXPECTED BY THE HYPOTHESIS; PARKS WAS BEING SUBJECTED TO A THIRD DEGREE GRILLING BY TOP COMPANY OFFICIALS. WE CAN'T ASSUME WORDS IN HIS MOUTH FROM OUR VANTAGE POINT, AND DENY HIM FULL REDRESS BECAUSE HE DIDN'T SAY WHAT WE THINK HE MIGHT PROPERLY HAVE SAID TO AVOID REVEALING HIS UNION ACTIVITY - A PROTECTION THE LABOUR RELATIONS ACT AFFORDS HIM.

PARKS WAS DISCHARGED FOR UNION ACTIVITY. THE COMPANY HAS EARNED NO COMFORT OR RELIEF FROM THE CONSEQUENCES OF A VIOLATION OF THE LABOUR RELATIONS ACT, PARTICULARLY SINCE THEIR PLOT TO GET RID OF PARKS WAS SO CAREFULLY PLANNED AND EXECUTED.

DISSENT OF BOARD MEMBER JOHN E. C. ROBINSON

JANUARY 8, 1968.

I DISSENT FROM THE FINDING OF THE MAJORITY THAT RONALD PARKS WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

AS IN ALL COMPLAINTS BROUGHT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT, THE PRIMARY ONUS FOR ESTABLISHING THE MERITS OF THE COMPLAINT LIES ON THE COMPLAINANT. IT IS THE COMPLAINANT WHO MUST SATISFY THE BOARD BY CREDIBLE EVIDENCE THAT THE ACTION TAKEN BY THE EMPLOYER WAS DISCRIMINATORY AND CONTRARY TO THE ACT.

MAY I BRIEFLY REVIEW THE EVIDENCE. THE EVIDENCE OF THE ALLEGED AGGRIEVED PERSON RONALD PARKS WAS THAT ON THE MORNING OF AUGUST 9TH, 1967, HE AWOKE ILL. HE CAUSED HIS ROOMMATE, A MEMBER OF THE ONTARIO PROVINCIAL POLICE TO TELEPHONE HIS EMPLOYER TO ADVISE IT OF THAT FACT. IN THE EARLY AFTERNOON, HE WAS VISITED BY A UNION ORGANIZER AND THE TWO OF THEM THEN CALLED UPON OTHER EMPLOYEES AT TWO SEPARATE RESIDENCES TO DISCUSS UNION MATTERS.

THE EVIDENCE OF THE COMPLAINANT IS FURTHER THAT AFTER WORKING AT UNION MATTERS, PARKS RETURNED TO HIS APARTMENT AT 5:00 P.M. WHERE HE STAYED FOR TWO HOURS. PARKS GAVE EVIDENCE THAT FROM THERE HE CALLED AT THE HOME OF HIS GIRL FRIEND WHERE HE STAYED UNTIL APPROXIMATELY 2:00 O'CLOCK THE NEXT MORNING.

THE EVIDENCE OF PARKS AS IT RELATED TO THE CALLS ON VARIOUS EMPLOYEES REGARDING UNION MATTERS IS CORROBORATED BY THE UNION ORGANIZER AND THE EVIDENCE OF THE NOTIFICATION OF SICKNESS TO THE EMPLOYER IS CORROBORATED BY HIS ROOMMATE. IT IS INTERESTING HOWEVER, AND PERHAPS SIGNIFICANT, THAT THE ROOMMATE GAVE EVIDENCE THAT HE RETURNED TO THE APARTMENT AT 5:00 P.M. BUT PARKS WAS NOT PRESENT.

THIS WOULD APPEAR TO BE A FUNDAMENTAL CONTRADICTION BETWEEN THE EVIDENCE OF THE ALLEGED AGGRIEVED AND HIS WITNESS.

THE EVIDENCE OF THE COMPANY WAS THAT HAVING FOUND THAT PARKS HAD SPENT THE AFTERNOON ON UNION BUSINESS, WHEN HE WAS SUPPOSEDLY ILL, THE COMPANY OBTAINED LEGAL ADVICE AS TO ITS RIGHTS IN THE MATTER. IT INQUIRED OF PARKS AS TO WHERE HE HAD BEEN ON THE DAY IN QUESTION AND HE ANSWERED THAT HE HAD BEEN SICK AND HOME ALL DAY. UPON RECEIVING THIS ANSWER, THE COMPANY OFFICIALS ALLOWED HIM AN OPPORTUNITY TO TELL THE TRUTH, BUT WHEN HE PERSISTED IN HIS PREVARICATION, THEY DISMISSED HIM FOR DISHONESTY.

IT IS INTERESTING TO NOTE THAT MY COLLEAGUES IN THE MAJORITY DECISION APPEAR TO FIND THAT THE ALLEGED AGGRIEVED WAS DISCHARGED BY THE COMPANY FOR DISHONESTY. IF THAT BE SO, THIS COMPLAINT SHOULD BE DISMISSED.

IT IS TRITE TO SAY THAT MATTERS OF DISCIPLINE ARE STRICTLY WITHIN THE AMBIT OF MANAGEMENT RIGHTS. WHAT THE MANAGEMENT DID IN THIS INSTANCE WAS TO DISCIPLINE AN EMPLOYEE FOR DISHONESTY. WHETHER, IN THE CIRCUMSTANCES, THE PENALTY IMPOSED BY MANAGEMENT WAS HARSH, SHOULD BE OF NO CONCERN TO THIS BOARD. OUR ONLY CONCERN IS WHETHER, ON THE BASIS OF THE EVIDENCE PRESENTED, THE ALLEGED AGGRIEVED WAS DEALT WITH CONTRARY TO THE LABOUR RELATIONS ACT. SURELY THE COMPANY NEED NOT MELLOW ITS NORMAL PENALTY IN MATTERS OF DISCIPLINE FOR FEAR THAT THIS BOARD MAY CONSTRUE AN ULTERIOR MOTIVE FROM THE SEVERITY OF THE DISCIPLINE.

AS MENTIONED EARLIER, IT IS THE COMPLAINANT WHO MUST SATISFY THE BOARD BY CREDIBLE EVIDENCE THAT THE ACTION TAKEN BY THE EMPLOYER WAS DISCRIMINATORY AND CONTRARY TO THE ACT. HOW HAS THIS COMPLAINANT SATISFIED THE ONUS RESTING UPON IT? HOW DOES THE MAJORITY FIND THAT THE ONUS IS SATISFIED, WHEN, AT THE SAME TIME IT FINDS THAT IN THE VERY MATTER WHICH LED TO THE DISCHARGE, PARKS WAS NOT A CREDIBLE PERSON? HOW DOES THE MAJORITY OF THE BOARD RECONCILE THE CONTRADICTIONS IN EVIDENCE BETWEEN THE ALLEGED AGGRIEVED AND HIS ROOMMATE?

CONSIDER THE PLIGHT OF THE COMPANY AT THE TIME OF THE DISCHARGE. THE FACTS WHICH IT HAD AT ITS DISPOSAL WERE THAT PARKS HAD BEEN ACTIVE IN THE UNION ORGANIZATIONAL CAMPAIGN. IT HAD BEEN BROUGHT TO THEIR ATTENTION THAT ON THE 9TH OF AUGUST, HE WOULD BE ABSENT FROM WORK BECAUSE OF SICKNESS. SUBSEQUENTLY, THE COMPANY FOUND OUT THAT DURING THAT DAY, HE HAD ACTIVELY WORKED ON UNION MATTERS. THEIR REASONABLE AND PROBABLE CONCLUSION WOULD BE THAT HIS ALLEGATION OF SICKNESS WAS UNTRUE AND WAS OFFERED MERELY AS A GUISE IN ORDER THAT HE MIGHT PURSUE HIS UNION ACTIVITIES ON THAT DATE. INDEED, I AM OF THE OPINION, AND I WOULD SO FIND, THAT IF THE COMPANY HONESTLY BELIEVED THAT PARKS HAD MISREPRESENTED HIS SICKNESS (WHETHER SUCH BELIEF WAS IN FACT CORRECT) IN ORDER TO ABSENT HIMSELF FROM HIS EMPLOYMENT TO WORK ON UNION MATTERS, IT HAD THE RIGHT TO DISCHARGE HIM WITHOUT THE PROVISIONS OF THE LABOUR RELATIONS ACT BEING APPLICABLE. SURELY THE FACT THAT AN EMPLOYEE IS ACTIVE IN UNION ACTIVITY DOES NOT CREATE AN IMMUNITY FOR SUCH EMPLOYEE FROM DISCIPLINE BY THE COMPANY.

HOWEVER, TO COMPOUND THESE FACTS, THE COMPANY QUESTIONED PARKS AS TO HIS WHEREABOUTS ON AUGUST 9TH AND HE STEADFASTLY MAINTAINED THAT HE WAS SICK AND HOME ALL DAY. THE COMPANY KNEW AS A FACT THAT SUCH WAS NOT SO, AND DISCHARGED HIM FOR DISHONESTY. I WOULD FIND THAT IT HAD AN UNQUALIFIED RIGHT TO DO SO, AND WOULD HAVE DISMISSED THIS APPLICATION.

IT IS MY OPINION THAT IN MATTERS OF TRUTH AND INTEGRITY, ON WHICH THE VERY FOUNDATION OF THE BOARD IS BUILT, THE BOARD MUST BE EXTREMELY SCRUPULOUS IN INTERPRETING THE EVIDENCE PRESENTED TO IT. HAVING FOUND THAT THE ALLEGED AGGRIEVED WAS PRONE TO LIE WHEN CONFRONTED WITH CERTAIN MATERIAL SITUATIONS, I AM UNABLE TO FIND THAT THE COMPLAINANT SATISFIED THE ONUS PLACED UPON IT, OR THAT THE RESPONDENT DID NOT GIVE A REASONABLE AND PROBABLE EXPLANATION FOR DISCHARGING PARKS.

13723-67-U: INTERNATIONAL LADIES GARMENT WORKERS UNION (COMPLAINANT)
V. THE CANADIAN H. W. GOSSARD CO. LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: ALFRED S. MAGERMAN, J. KITTS FOR THE APPLICANT AND JAMES F. LAING, E. A. TURNER FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER H. F. IRWIN:
JANUARY 3, 1968.

1. THIS IS AN APPLICATION FOR RELIEF MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS MRS. MARJORIE TRIPP, MRS. DONNA LANE AND MRS. VERA HATCHINSKI WERE DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT IN THAT EACH OF THE AGGRIEVED PERSONS WERE LAID OFF BY THE RESPONDENT FOR AN INDEFINITE TIME ON APRIL 28TH, 1967 AND NOTWITHSTANDING THAT THEY WERE AVAILABLE TO GO BACK TO WORK WERE NOT RECALLED WHEN WORK BECAME AVAILABLE IN PREFERENCE TO NEW EMPLOYEES WHO WERE HIRED BY THE RESPONDENT AT THAT TIME. THE COMPLAINANT REQUESTS THAT EACH OF THE AGGRIEVED PERSONS BE REINSTATED TO THEIR FORMER POSITIONS WITH THE RESPONDENT WITH COMPENSATION FOR LOSS OF EARNINGS FROM SEPTEMBER 18TH, 1967 TO THE DATE OF THEIR REINSTATEMENT. THE RESPONDENT DENIES THE COMPLAINT.

3. THE EVIDENCE IS CLEAR THAT THE THREE AGGRIEVED PERSONS, ALONG WITH ABOUT TWELVE OTHER EMPLOYEES WERE LAID OFF BY THE RESPONDENT ON APRIL 28TH, 1967. IT IS ALSO EVIDENT THAT THE AGGRIEVED PERSONS WERE GIVEN TO UNDERSTAND THAT THE LAY OFF WAS TEMPORARY AND THAT THEY WOULD BE RECALLED WHEN WORK BECAME AVAILABLE. IN FACT,

MRS. TRIPP AND MRS. HATCHINSKI WERE RECALLED ON OCTOBER 11TH, AND MRS. LANE ON OCTOBER 13TH. HOWEVER, AS THERE WAS THEN A STRIKE IN PROGRESS AT THE RESPONDENT'S PLANT EACH OF THEM ADVISED MR. MORLEY, THE PLANT MANAGER, THAT ALTHOUGH THEY WANTED TO RETURN TO WORK THEY WOULD NOT CROSS THE PICKET LINE TO REPORT FOR WORK. THE EVIDENCE ALSO SUPPORTS THE FACT THAT THREE NEW EMPLOYEES WERE HIRED BY THE RESPONDENT BETWEEN THE MIDDLE AND THE END OF SEPTEMBER. MRS. TRIPP OBTAINED A LICENSE TO SELL REAL ESTATE AND WAS ENGAGED IN THAT BUSINESS IN PORT PERRY SINCE JULY. MRS. LANE COULD NOT FIND SUITABLE WORK AND HAS BEEN DRAWING UNEMPLOYMENT INSURANCE BENEFITS FROM THE DATE OF THE LAY OFF. MRS. HATCHINSKI OBTAINED A JOB IN A PASTRY SHOP IN PORT PERRY ON OCTOBER 9TH AT A HIGHER RATE OF PAY THAN SHE HAD RECEIVED FROM THE RESPONDENT. ALL OF THEM STATED, HOWEVER, THAT THEY WERE AVAILABLE AND DESIRED TO RETURN TO WORK WITH THE RESPONDENT. BOTH MRS. TRIPP AND MRS. LANE CONTENDED THAT AS THEY HAD TESTIFIED AT PREVIOUS HEARINGS BEFORE THE BOARD ON BEHALF OF THE COMPLAINANT, THE RESPONDENT WAS AWARE OF THEIR MEMBERSHIP IN THE UNION AND THAT THIS WAS THE REASON THAT THEY WERE NOT RECALLED BY THE RESPONDENT IN PREFERENCE TO THE HIRING OF NEW EMPLOYEES. THEY DID, HOWEVER, ADMIT ON CROSS-EXAMINATION THAT OF THE OTHER EMPLOYEES WHO HAD ALSO BEEN LAID OFF SOME HAD BEEN PREVIOUSLY RECALLED AND SOME OF THOSE PERSONS HAD ALSO TESTIFIED ON BEHALF OF THE COMPLAINANT AT THE BOARD.

4. THERE IS NO SUGGESTION THAT THE LAY OFF IN APRIL OF APPROXIMATELY FIFTEEN EMPLOYEES INCLUDING THE AGGRIEVED PERSONS WAS FOR ANYTHING BUT SOUND BUSINESS REASONS AT THAT TIME. MR. TURNER, THE VICE-PRESIDENT OF THE RESPONDENT TESTIFIED THAT HE HAD INSTRUCTED MR. MORLEY TO LAY OFF EMPLOYEES ON A SENIORITY AND ABILITY BASIS DUE TO LACK OF WORK WHICH RESULTED IN A CUT BACK OF PRODUCTION. IN REFERENCE TO THE HIRING OF THREE NEW EMPLOYEES IN SEPTEMBER HE STATED THAT THEY WERE HIRED FOR DIFFERENT OPERATIONS THAN THOSE BEING PERFORMED BY THE AGGRIEVED PERSONS IN APRIL. HE CONTENDED THAT IF THE AGGRIEVED PERSONS HAD BEEN BROUGHT IN AT THAT TIME THEY WOULD HAVE HAD TO BE TRAINED FOR THESE NEW OPERATIONS THEN LATER SHIFTED TO THEIR PREVIOUS JOBS AND AT THAT TIME NEW EMPLOYEES WOULD BE HIRED AND THIS WOULD REQUIRE ANOTHER TRAINING PERIOD. WHETHER OR NOT THE RESPONDENT PROPERLY ASSESSED THE MERITS OF THE AGGRIEVED PERSONS' CAPABILITIES IN PERFORMING THE NEW TASKS WITHOUT EXTENSIVE TRAINING OR DEALT FAIRLY WITH THEM IN THIS REGARD IS NOT THE QUESTION BEFORE THE BOARD. THE REAL ISSUE IS WHETHER IN THE CIRCUMSTANCES PUT FORTH BY THE COMPLAINANT THE AGGRIEVED PERSONS WERE DISCRIMINATED AGAINST BECAUSE OF THEIR UNION ACTIVITIES.

5. THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE RESPONDENT KNEW OR OUGHT TO HAVE KNOWN THAT MRS. HATCHINSKI WAS A MEMBER OF OR ACTIVE ON BEHALF OF THE UNION. BOTH MRS. TRIPP AND MRS. LANE HAD PREVIOUSLY TESTIFIED ON BEHALF OF THE COMPLAINANT AT THE BOARD AND IT IS THEREFORE A LOGICAL INFERENCE THAT THE RESPONDENT WOULD BE AWARE OF THEIR MEMBERSHIP COMMITMENTS. IT IS TO BE NOTED AS WELL THAT SOME EMPLOYEES EFFECTED BY THE LAY OFF AND WHO HAD TESTIFIED ON

BEHALF OF THE COMPLAINANT HAD BEEN RECALLED AND THERE IS NO EVIDENCE THAT JUST THOSE EMPLOYEES SUSPECTED OR KNOWN TO HAVE BEEN UNION SUPPORTERS WERE LAID OFF IN APRIL. THE RESPONDENT DID IN FACT RECALL EACH OF THE AGGRIEVED PERSONS ALTHOUGH THERE WAS NO CONTRACTURAL OBLIGATION ON ITS PART TO DO SO, NOR OF COURSE IS THERE AN OBLIGATION ON THESE EMPLOYEES TO CROSS A PICKET LINE. IN CASES OF THIS NATURE THERE MAY BE SUSPICIONS OF WRONG DOING BASED ON THE FACT OF AN EMPLOYEE'S UNION ACTIVITIES BUT SUCH EVIDENCE BY ITSELF DOES NOT MEET THE PRIMARY OBLIGATION ON THE COMPLAINANT TO ESTABLISH THE MERITS OF ITS COMPLAINT. IN THIS REGARD, THE COMPLAINANT MUST SATISFY THE BOARD ON A REASONABLE BASIS BY SUBSTANTIAL EVIDENCE.

6. WE ARE OF THE OPINION THAT THE COMPLAINANT DID NOT SATISFY ITS PRIMARY OBLIGATION WITH RESPECT TO THE CLAIM OF MRS. HATCHINSKI. AS TO THE COMPLAINTS OF MRS. TRIPP AND MRS. LANE, THE BOARD HAS GIVEN CONSIDERATION TO ALL OF THE CIRCUMSTANCES SET FORTH IN EVIDENCE AT THE HEARING INCLUDING THE NATURE AND THE BASIS FOR THE REASONS GIVEN FOR THE RESPONDENT'S ACTIONS IN THIS MATTER AND WE ARE OF THE OPINION THAT THE EVIDENCE IS NOT CONSISTENT WITH A CONCLUSION THAT IN DEALING WITH THE AGGRIEVED PERSONS THE RESPONDENT CONTRAVENED SECTION 50(A) OF THE LABOUR RELATIONS ACT.

7. IN THE RESULT, THEREFORE, HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES PRESENTED TO THE BOARD, WE ARE NOT SATISFIED THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT.

8. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFFE:

JANUARY 3, 1968:

1. HAVING GIVEN CAREFUL CONSIDERATION TO ALL OF THE EVIDENCE IN THE INSTANT CASE, I MUST DISSENT FROM THE DECISION OF THE MAJORITY. EVIDENCE ADDUCED BY THE COMPLAINANT WAS THAT ALL THREE AGGRIEVED PERSONS - MRS. MARJORIE TRIPP, MRS. DONNA LANE, AND MRS. VERA HATCHINSKI - WERE CAPABLE EMPLOYEES AND HAD A GOOD WORK RECORD WITH THE RESPONDENT. IT WAS ALSO ESTABLISHED BY THE COMPLAINANT THAT PRIOR TO, DURING, AND SUBSEQUENT TO THE 'LAY-OFF' OF THE THREE AGGRIEVED THERE WAS A GREAT DEAL OF UNION AND COUNTER-UNION ACTIVITY IN THE PLANT. THE THREE AGGRIEVED PERSONS WERE ALL ACTIVE MEMBERS OF THE UNION. DONNA LANE AND MARJORIE TRIPP HAD APPEARED BEFORE THE LABOUR RELATIONS BOARD IN OTHER PROCEEDINGS ON BEHALF OF THE COMPLAINANT UNION.

2. THE EVIDENCE WAS TO THE EFFECT THAT THE THREE AGGRIEVED WERE LAID OFF WHILE LESS SENIOR EMPLOYEES WERE RETAINED IN THE RESPONDENT'S PLANT. OVERTIME HAD BEEN WORKED ON VARIOUS OCCASIONS DURING THE LAY-OFF. THREE NEW EMPLOYEES HAD BEEN HIRED BY THE RESPONDENT DURING THE LAY-OFF.

3. MRS. MARJORIE TRIPP TESTIFIED THAT SHE WENT TO SEE MR. D. MORLEY AT THE TIME OF HER LAY-OFF AND ASKED HIM WHY SHE HAD BEEN CHOSEN TO BE LAID OFF; SHE ASKED HIM WHY HE WAS RETAINING EMPLOYEES JUNIOR TO HERSELF. HE TOLD HER THAT SHE WAS JUST CHOSEN. SHE ASKED HIM IF IT WAS BECAUSE OF HER UNION ACTIVITIES, AND HE REPLIED, 'NO' SHE THEN ASKED HIM IF IT WAS BECAUSE OF THE QUANTITY OR QUALITY OF HER WORK, AND HE REPLIED, "CERTAINLY NOT." MRS. TRIPP ALSO TESTIFIED THAT MORLEY LED HER TO BELIEVE THAT SHE WOULD BE CALLED BACK IN JUNE. SHE TALKED WITH MORLEY IN AUGUST AND AGAIN IN SEPTEMBER WITHOUT RECEIVING A SATISFACTORY ANSWER.

4. MRS. VERA HATCHINSKI HAD WORKED FOR THE RESPONDENT FOR ALMOST THREE YEARS. SHE HAD NEVER BEEN LAID OFF BEFORE IN THAT TIME. SHE HAD AN EXCELLENT WORK RECORD AND HAD NEVER RECEIVED ANY COMPLAINTS ABOUT THE QUANTITY OR QUALITY OF HER WORK. SHE MET MORLEY IN THE STREET IN JULY AND ASKED HIM WHEN SHE WOULD BE RECALLED. HE TOLD HER HE DID NOT KNOW.

5. MRS. DONNA LANE TESTIFIED THAT WHEN SHE WAS LAID OFF SHE ASKED MORLEY IF IT WAS TO BE FOR A FEW DAYS OR WHAT PERIOD OF TIME. HE TOLD HER HE DID NOT KNOW. SHE TALKED TO MORLEY AGAIN IN THE SUMMER, AND HE TOLD HER IN REPLY TO HER QUESTION AS TO WHEN SHE WOULD BE CALLED BACK THAT WORK WAS STILL SLACK.

6. THE INDEPENDENT EVIDENCE OF MRS. DIANNE KIERS WAS TO THE EFFECT THAT DURING THE PERIOD OF LAY-OFF OVERTIME HAD BEEN WORKED IN THE PLANT. THREE ENTIRELY NEW EMPLOYEES HAD STARTED WORK IN THE PLANT, AND ONE OF THESE, MRS. SHAW, WAS DOING THE WORK OF MARJORIE TRIPP, ONE OF THE AGGRIEVED PERSONS.

7. THE COMPLAINANT ALLEGED THAT THE THREE AGGRIEVED PERSONS HAD BEEN DEALT WITH BY MR. D. MORLEY, PLANT MANAGER, CONTRARY TO THE PROVISIONS OF SECTION 50, SUBSECTION (A) OF THE LABOUR RELATIONS ACT IN THAT HE DID ON BEHALF OF THE RESPONDENT TERMINATE THE EMPLOYMENT OF THE AGGRIEVED BECAUSE OF THEIR MEMBERSHIP OR ACTIVITY IN THE UNION. THE COMPLAINANT DISCHARGED THE ONUS UPON IT UNDER SECTION 65 BY PRESENTING SUBSTANTIAL EVIDENCE TO ESTABLISH THE MERITS OF THE COMPLAINT. AS WAS POINTED OUT BY THE BOARD IN THE METROPOLITAN MEAT PACKERS LTD. CASE, CCH, CANADIAN LABOUR LAW REPORTER, VOL. 1, PARA. 16,230, THE ONUS OF PROOF RESTING ON THE COMPLAINANT IN A CLAIM UNDER SECTION 65 OF THE ACT IS NO GREATER THEN IN AN ORDINARY CIVIL ACTION; NAMELY THAT TO BE SUCCESSFUL A COMPLAINANT MUST PROVE, BY A PREPONDERANCE OF PROBABILITIES THAT THE EMPLOYER HAS, IN THE MANNER ALLEGED IN THE PROCEEDINGS, DISCRIMINATED AGAINST THE EMPLOYEE CONTRARY TO THE ACT. THE STRONG AND DETAILED CASE PRESENTED BY THE COMPLAINANT WAS MORE THAN SUFFICIENT TO SHIFT THE BURDEN OF JUSTIFICATION TO THE RESPONDENT TO ESTABLISH THAT PROPER CAUSE EXISTED FOR THE TERMINATIONS OF THE AGGRIEVED.

8. THE RESPONDENT IN MY ESTIMATION FAILED TO MEET THE CASE PRESENTED BY THE COMPLAINANT; IT FAILED TO GIVE A CREDIBLE EXPLANATION FOR THE DISCHARGE OF THE AGGRIEVED. THE RESPONDENT ALONE KNEW AND HAD THE MEANS OF KNOWLEDGE OF THE ACTUAL REASONS FOR THE TERMINATIONS OF EMPLOYMENT OF THE AGGRIEVED PERSONS.

9. THE RESPONDENT CALLED ONLY ONE WITNESS TO MEET THE SUBSTANTIAL CASE PRESENTED BY THE COMPLAINANT: THIS WITNESS MR. EDWARD A. TURNER, VICE-PRESIDENT OF THE RESPONDENT AND MANAGER OF ALL OF THE COMPANY'S OPERATIONS IN CANADA. HE IS NORMALLY LOCATED IN TORONTO AND IS DIRECTLY RESPONSIBLE FOR THE TORONTO PLANT AS WELL AS THE PORT PERRY PLANT. HIS NORMAL CONTACT WITH THE PORT PERRY PLANT IS BY WAY OF TELEPHONE CONTACT WITH MR. D. MORLEY, PLANT MANAGER IN PORT PERRY. HE TESTIFIED THAT IN APRIL HE TOLD MORLEY TO LAY OFF A NUMBER OF EMPLOYEES; HE SUGGESTED THEY BE LAID OFF IN ACCORDANCE WITH SENIORITY AND ABILITY. HE DID NOT KNOW THE AGGRIEVED PERSONS PERSONALLY; HE WAS SATISFIED WITH WHAT MR. MORLEY TOLD HIM WITH REGARD TO THE LAY-OFFS. IN EXPLAINING AWAY THE HIRING OF THREE NEW EMPLOYEES DURING THE LAY-OFF OF THE AGGRIEVED THREE SENIOR EMPLOYEES, HE STATED THAT THE NEW EMPLOYEES WERE HIRED FOR DIFFERENT OPERATIONS THAN THOSE BEING PERFORMED BY THE AGGRIEVED PERSONS. HE SAID THAT IF THE AGGRIEVED PERSONS HAD BEEN RE-CALLED THAT THEY WOULD HAVE TO BE RETRAINED FOR THE NEW OPERATIONS, THEN LATER SHIFTED TO THEIR PREVIOUS JOBS, AND AT THAT TIME NEW EMPLOYEES WOULD BE HIRED AND THIS WOULD REQUIRE ANOTHER TRAINING PERIOD. THIS EXCUSE FOR NOT RECALLING THE AGGRIEVED IS UNACCEPTABLE TO ME. THE EVIDENCE AT THE HEARING IS TO THE EFFECT THAT THE RESPONDENT IS ENGAGED IN THE GARMENT INDUSTRY, IN PARTICULAR THE PRODUCTION OF UNDERGARMENTS, AND THERE ARE VARIOUS JOBS, SUCH AS VARIOUS TYPES OF SEWING AND ATTACHING HOOKS AND EYES TO THE GARMENTS. THE WAGES PAID TO THE EMPLOYEES IS THE BARE MINIMUM OF ONE DOLLAR PER HOUR. TO IMPLY UNDER THE CIRCUMSTANCES THAT THE PLANT WOULD BE DISRUPTED BECAUSE OF THE POSSIBLE RETRAINING OF THE AGGRIEVED FOR THE NEW POSITIONS IS TO BUILD A PICTURE OF A HIGH DEGREE OF TRAINING REQUIRED TO QUALITY FOR THESE POVERTY-LINE WAGES.

10. IN ANY EVENT, APART FROM MR. TURNER'S DIRECT EVIDENCE AS IT RELATED TO HIS OWN DUTIES AND RESPONSIBILITIES, THE REST OF HIS EVIDENCE AS IT APPLIED TO THE PORT PERRY OPERATION AND TO THE AGGRIEVED PERSONS WAS, AT ITS BEST, HERESAY EVIDENCE.

11. WE ARE THEN CALLED UPON TO MAKE A DECISION WEIGHING THE SUBSTANTIAL AND DIRECT EVIDENCE OF THE COMPLAINANT AS OPPOSED TO THE HEARSAY EVIDENCE OF THE RESPONDENT. IT IS WORTHY OF NOTE THAT MR. MORLEY WAS NOT CALLED AS A WITNESS BY THE RESPONDENT. THE COMPLAINANTS' ALLEGATIONS REFERRED SPECIFICALLY TO THE ACTIONS OF MR. MORLEY AS BEING CONTRARY TO THE ACT.

12. THE COMPLAINANT TENDERED SUBSTANTIAL EVIDENCE TO ESTABLISH ITS CASE, WHILE THE RESPONDENT FAILED TO CALL THE ONE WITNESS - MR. MORLEY - WHO WAS THE ONLY PERSON WHO COULD HAVE HAD KNOWLEDGE OF THE REASONS FOR THE DISCHARGE OF THE AGGRIEVED.

13. THE COMPLAINANTS CALLED EVIDENCE FROM THE AGGRIEVED PERSONS TRIPP, LANE AND HACHINSKI, TOGETHER WITH THE SUPPORTING EVIDENCE OF KIERS, THAT WAS MORE THAN SUFFICIENT FROM WHICH THE BOARD MAY AND MUST DRAW INFERENCE THAT THE AGGRIEVED WERE DEALT WITH BY THE EMPLOYER BECAUSE OF THEIR MEMBERSHIP AND ACTIVITY IN THE UNION. THE ABSENCE OF AN ADEQUATE DEFERENCE BY THE RESPONDENT TO THESE SERIOUS CHARGES LEADS ME TO CONCLUDE THAT THE PREPONDERANCE OF PROBABILITY IN THIS CASE DICTATES MY FINDING THAT THE AGGRIEVED WERE DISCHARGED BY THE RESPONDENT CONTRARY TO SECTION 50, SUBSECTION (A) OF THE LABOUR RELATIONS ACT. I WOULD ORDER THE REINSTATEMENT OF THE AGGRIEVED WITH FULL COMPENSATION.

13846-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. JAUVIN TRUCK BODIES LTD. (RESPONDENT).

- AND -

13847-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. JAUVIN TRUCK BODIES LTD. (RESPONDENT).

- AND -

13848-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. JAUVIN TRUCK BODIES LTD. (RESPONDENT).

- AND -

13849-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. JAUVIN TRUCK BODIES LTD. (RESPONDENT).

BEFORE: R. F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: LARRY SHEFFE FOR THE APPLICANT, AND J. PIERRE BENOIT, PIERRE JAUVIN, AND JOHN JAUVIN FOR THE RESPONDENT.

DECISION OF R. F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN.
JANUARY 25, 1968.

1. THIS IS A COMPLAINT THAT THE AGGRIEVED PERSONS NAMED BELOW WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT. SPECIFICALLY, THE COMPLAINT IS THAT THEY WERE LAID OFF BECAUSE OF MEMBERSHIP IN THE COMPLAINANT UNION. THE RESPONDENT DENIES THIS ALLEGATION AND ARGUES THAT THE

LAY-OFF WAS DICTATED BY THE BUSINESS SITUATION AT THE TIME, AND THAT THE PARTICULAR WORK NORMALLY DONE BY THE COMPLAINANTS WAS UNAVAILABLE FOR THEM.

2. THE EMPLOYEES WITH WHOM THE COMPLAINT IS CONCERNED AND THE DATES UPON WHICH THE LAY-OFFS TOOK PLACE ARE LISTED BELOW. THE ORIGINAL LIST CONTAINED THE NAME OF JEAN C. THERIEN, WHO WAS LAID OFF ON OCTOBER 27TH, 1967. THIS EMPLOYEE DID NOT APPEAR AT THE HEARING, AND THE COMPLAINANT PRESENTED NO EVIDENCE WITH RESPECT TO HIM. REFERENCE, HOWEVER, WAS MADE TO HIM IN THE COMPANY EVIDENCE DEALING WITH THE LAY-OFF OF ALDEGE TESSIER.

3. THE NAMES AND DATES REFERRED TO IN THE COMPLAINT, WITH THE EXCEPTION NOTED ABOVE, ARE AS FOLLOWS:

JACQUES LANTHIER, OCTOBER 26TH, 1967;
EVEREST FOURNIER, OCTOBER 27TH, 1967;
ALDEGE TESSIER, OCTOBER 20TH, 1967.

ALL OF THE FOREGOING TESTIFIED AT THE HEARING.

4. THE COMPLAINANT APPLIED TO THE ONTARIO LABOUR RELATIONS BOARD FOR CERTIFICATION ON OCTOBER 12TH, 1967, AND THE CERTIFICATE WAS ISSUED ON THE 31ST OF OCTOBER, 1967. THE LAY-OFFS OCCURRED THEN, BETWEEN THE DATE OF APPLICATION AND THE ISSUANCE OF THE CERTIFICATE.

5. ALL THE AGGRIEVED PERSONS HAD BEEN RECALLED TO WORK PRIOR TO THE HEARING OF THIS MATTER. THE REPLY FILED BY THE RESPONDENT MAKES REFERENCE TO DATES OF RECALL. FOURNIER SAID HE WAS OFF FOR ONE WEEK; TESSIER STATED IT WAS THREE WEEKS AFTER OCTOBER 20TH WHEN HE WAS RECALLED. THE EVIDENCE ALSO ESTABLISHED THAT SIX EMPLOYEES OF THE RESPONDENT IN ADDITION TO THOSE COMPLAINING WERE LAID OFF AT THE SAME TIME. NO OTHER EVIDENCE WITH RESPECT TO THESE SIX EMPLOYEES WAS OFFERED BY THE RESPONDENT OR THE COMPLAINANT.

6. THERE WAS EVIDENCE THAT FOURNIER AND TESSIER WERE ASKED BY AN EMPLOYEE, AURINAL LACROIX, TO SIGN A PETITION AGAINST THE UNION. BOTH OF THEM REFUSED. FOURNIER WAS APPROACHED DURING WORKING HOURS BY LACROIX, A MECHANIC EMPLOYED IN A PART OF THE PLANT SEPARATE FROM WHERE FOURNIER WORKED. FOURNIER NOTICED LACROIX IN HIS AREA SEVERAL TIMES DURING THE DAY TALKING TO OTHER EMPLOYEES. HE COMPLAINED TO THE FOREMAN ABOUT THIS ACTIVITY. THE FOREMAN REPLIED THAT IT HAD NOTHING TO DO WITH HIM. FOURNIER'S EVIDENCE WAS THAT THE USUAL PRACTICE IS FOR THE FOREMAN TO BREAK UP ANY CONVERSATIONS IN THE PLANT EVEN WHEN TWO MEN FROM THE SAME SECTION ARE INVOLVED. TESSIER TESTIFIED THAT LACROIX CALLED HIM BY TELEPHONE AFTER THE DATE OF THE FORMER'S LAY-OFF AND SOUGHT TO HAVE HIM SIGN A PETITION. HE TESTIFIED THAT LACROIX TOLD HIM IT WOULD BE BEST FOR HIM IF HE SIGNED, BECAUSE HE WOULD NEED THE WORK.

7. LANTHIER, WHO WAS AN APPRENTICE PAINTER, TESTIFIED THAT WHEN HE WAS LAID OFF ON OCTOBER 11TH, 1967 HE WAS TOLD TO CALL IN BY PHONE EVERY DAY TO SEE IF HE WOULD BE NEEDED. ON OCTOBER 26TH HE WAS TOLD TO REPORT FOR WORK. HE HITCHHIKED IN TO OTTAWA FROM WENDOVER - SOME THIRTY MILES. ON THE WAY HE WAS PICKED UP BY LACROIX, THE MECHANIC WHO HAD APPROACHED THE OTHER TWO CONCERNING THE PETITION. LACROIX ASKED LANTHIER WHAT HE THOUGHT OF THE UNION. THE LATTER SAID THAT HE THOUGHT THE UNION WAS A GOOD THING. LANTHIER WAS ONLY IN THE PLANT FOR ONE-HALF HOUR ON OCTOBER 26TH WHEN HE WAS ASKED BY THE FOREMAN TO LEAVE. THERE WAS NO EVIDENCE AS TO THE DATE OF HIS RECALL.

8. WHEN TESSIER WAS ASKED BY THE COMPLAINANT'S REPRESENTATIVE WHETHER HE HAD BEEN ACTIVE IN THE UNION, HE REPLIED THAT HE DIDN'T START IT BUT HAD FOLLOWED SUITE. FOURNIER REPLIED TO THE SAME QUESTION, "I WENT ALONG WITH EVERYONE ELSE - I WENT ALONG WITH IT." THE QUESTION WAS NOT PUT TO LANTHIER. FOURNIER, HOWEVER, TESTIFIED THAT WHEN HE WAS BEING LAID OFF HE ASKED HIS FOREMAN FOR THE REASON. THE REPLY HE RECEIVED, AS RELATED BY HIM, WAS THAT "WE PLAYED A DIRTY TRICK ON THE BOSS WHEN WE TRIED TO GET THE UNION IN, AND THAT WAS THE REASON I WAS LAID OFF." FOURNIER LATER GAVE EVIDENCE OF OTHER REASONS GIVEN TO HIM TO WHICH REFERENCE WILL BE MADE FURTHER ON IN THE DECISION.

9. IN ADDITION TO THE THREE GRIEVORS, THE COMPLAINANT CALLED LEO GRATTON, A FORMER EMPLOYEE OF THE RESPONDENT. HE HAD BEEN EMPLOYED BY THE RESPONDENT AS A SPARE PAINTER. ON OCTOBER 20TH, 1967 MR. JAUVIN, ONE OF THE OWNERS OF THE RESPONDENT, TOLD HIM THAT THERE WAS NO WORK FOR HIM TO DO AND THAT HE WAS TO TAKE A WEEK'S HOLIDAYS. HE WAS PAID FOR THE WEEK. WHEN HE CAME BACK TO WORK HE WAS TOLD THAT IF IT WAS GOING TO BE QUIET HE WOULD BE LAID OFF AGAIN. HE COMPLAINED THAT THE FOREMAN'S ATTITUDE WAS DIFFERENT. HE TESTIFIED THAT ONE DAY HE WAS TOLD TO TAKE HIS TIME AND DO A GOOD JOB, AND THE NEXT DAY THAT HE WAS TOO SLOW. HE SAID THAT PRIOR TO OCTOBER 12TH, 1967 HE GOT ALONG VERY WELL WITH THE FOREMAN. HE ADMITTED THAT THERE HAD BEEN SOME DIFFERENCES OF OPINION PRIOR TO OCTOBER 12TH, BUT CLAIMED THAT FOLLOWING THAT DATE THE FOREMAN'S ATTITUDE TOWARDS HIM HAD CHANGED TO SUCH A DEGREE THAT HE QUIT THE JOB. HE SAID HE HAD BEEN ACTIVE IN BRINGING IN THE UNION BUT DID NOT ELABORATE ON THAT STATEMENT. IN CROSS-EXAMINATION THE WITNESS ADMITTED HE HAD BEEN TOLD BY MR. JAUVIN THAT THE WORK HE WAS DOING HAD BEEN DONE SO POORLY BY A PREVIOUS PAINTER THAT THERE WAS DANGER OF LOSING THE CONTRACT. HE HIMSELF HAD DONE PAINT WORK ON ITEMS FOR THE SAME CUSTOMER PREVIOUSLY, AND TWO OF THEM HAD BEEN UNSATISFACTORY. HE HAD BEEN TOLD ABOUT THIS AT THE TIME. THE WITNESS FURTHER ADMITTED THAT HE HAD HAD A DIFFERENCE OF OPINION WITH THE FOREMAN AS TO WHICH OF TWO COLOURS SHOULD BE APPLIED FIRST TO THESE ITEMS.

10. PIERRE JAUVIN, ONE OF THE RESPONDENT'S ADMINISTRATORS, TESTIFIED THAT THE LAY-OFF OF THE GRIEVORS AND SIX OTHER EMPLOYEES WAS MADE

NECESSARY BY BUSINESS CONDITIONS. HE GAVE EVIDENCE OF THE GENUINE ECONOMIC POSITION OF THE COMPANY AT THE TIME OF THE LAY-OFF. IT WAS HIS EVIDENCE THAT IN SEPTEMBER THE DIRECTORS OF THE COMPANY DECIDED TO CONSTRUCT ANOTHER BUILDING FOR THEIR PLANT. IT WOULD BE NECESSARY TO BORROW FROM THE BANK, AND AN AUDIT WAS ORDERED. THE PRELIMINARY REPORT FROM THE AUDITORS WAS RECEIVED IN THE FIRST WEEKS OF OCTOBER. THE AUDIT INDICATED A SUBSTANTIAL LOSS IN OPERATIONS. A REVIEW OF THE LABOUR SITUATION AND THE COST OF LABOUR WAS SUGGESTED BY THE AUDITORS. IT WAS FOUND, AND EVIDENCE THAT SUPPORTED THE FINDING WAS INTRODUCED AT THE HEARING, THAT THE PRODUCTION OF STAKE BODIES, UPON WHICH TESSIER CUSTOMARILY WORKED, TOTALLED SIX FROM JULY TO OCTOBER 1967, WITH NONE BEING PRODUCED IN OCTOBER, 1967. IN 1966 A TOTAL OF 24 STAKE BODIES WERE PRODUCED IN THE SAME PERIOD, WITH EIGHT BEING MADE IN OCTOBER OF THAT YEAR. THE EVIDENCE WITH RESPECT TO HYDRAULIC TAIL GATES, WHICH WERE FOURNIER'S RESPONSIBILITY, INDICATES THAT, WHEREAS FROM JULY TO OCTOBER, 1966 THE RESPONDENT PRODUCED 26 WITH FIVE BEING IN OCTOBER, IT PRODUCED ONLY NINE IN THE SAME PERIOD OF 1967 WITH ONE IN THE MONTH OF OCTOBER. THE WITNESS ASCRIBED THE SITUATION TO A SEASONAL DECLINE EXAGGERATED BY A LENGTHY STRIKE AT THE FORD PLANTS AND BY A STRIKE AT THE PLANT WHICH PRODUCED THE HYDRAULIC TAIL GATES.

11. TESSIER STATED IN HIS TESTIMONY THAT DURING HIS FIVE YEARS WITH THE COMPANY HIS PRINCIPAL OCCUPATION HAD BEEN IN THE BUILDING OF STAKE BODIES. AT THE TIME OF THE LAY-OFF HE WAS NOT ENGAGED IN MAKING STAKE BODIES BUT IN STOCK-PIILING STAKE POSTS. HE AGREED THAT THERE WERE SOME 1,600 POSTS STOCK-PILED AND THAT THIS WAS THE LARGEST NUMBER HE HAD SEEN IN STOCK DURING HIS PERIOD WITH THE COMPANY.

12. FOURNIER TESTIFIED THAT WHEN HE WAS LAID OFF HE WAS TOLD THEY WERE WAITING FOR HYDRAULIC TAIL GATES AND THAT IT MIGHT BE A DAY OR IT MIGHT BE A WEEK. HE STATED THAT HE WAS ASKED TO CALL IN. ON THE FRIDAY AFTER HIS LAY-OFF HE WAS TOLD TO COME BACK IN ON THE MONDAY. HE SAID THAT THERE SEEMED TO BE LESS WORK AVAILABLE THAN IN THE PRECEEDING YEAR. HE ALSO SAID THAT IN THE TWO MONTHS PRIOR TO THE LAY-OFF THERE WAS A DECREASE IN THE WORK BEING DONE.

13. LANTHIER GAVE NO TESTIMONY WITH RESPECT TO THE VOLUME OF WORK HE WAS PERFORMING. HE WAS, HOWEVER, AN APPRENTICE PAINTER, AND SINCE THE MORE SENIOR PAINTER GRATTON HAD BEEN SENT ON A WEEK'S PAID HOLIDAY BECAUSE OF LACK OF WORK, IT WOULD SEEM OBVIOUS THAT THERE WAS NO WORK FOR THE APPRENTICE.

14. THERE WAS EVIDENCE THAT DURING SLACK PERIODS IN THE PAST NOBODY HAD BEEN LAID OFF. FOURNIER SAID THAT DURING SUCH PERIODS HE HAD WORKED AT CLEANING UP THE BUILDING AND ON CONSTRUCTION WORK. TESSIER HAD NOT BEEN LAID OFF DURING FIVE AND A HALF YEARS' SERVICE WITH THE COMPANY. HE WAS EMPLOYED, HE STATED, DURING SLACK PERIODS DOING ODD REPAIR JOBS AND ON CONSTRUCTION WORK ON THE NEW BUILDING.

15. BY WAY OF REPLY TO THE FOREGOING, THE RESPONDENT TESTIFIED THAT REPAIR WORK WAS NOW NEGLIGIBLE SINCE THEY HAD MOVED INTO THE NEW QUARTERS AND THAT THE CONSTRUCTION WORK WHICH HAD BEEN AVAILABLE WAS FINISHED IN SEPTEMBER. THE COMPANY'S RECORD SHOWED THAT FROM SEPTEMBER 11TH, 1967 TO OCTOBER 30TH, 1967 THE RESPONDENT HAD PAID FOR 615 NON-PRODUCTIVE HOURS. THE RESPONDENT ARGUED THAT THIS RECORD, BASED UPON REPORTS MADE BY THE EMPLOYEES CONCERNED, INDICATED ITS REGARD FOR KEEPING THE MEN EMPLOYED IN ADDITION TO A SERIOUS SITUATION WHICH IT COULD NOT AFFORD TO PROLONG.

16. THE EVIDENCE OF THE RESPONDENT WITH RESPECT TO THE SHORTAGE OF WORK, AND PARTICULARLY WITH RESPECT TO THE SHORTAGE OF THE SPECIFIC TASKS NORMALLY DONE BY TESSIER AND FOURNIER, IS SUPPORTED BY THE TESTIMONY OF THESE TWO GRIEVORS THEMSELVES.

17. THIS FACT IS OF PARTICULAR SIGNIFICANCE WITH RESPECT TO FOURNIER WHO, IT WILL BE RECALLED, TESTIFIED THAT HE WAS TOLD BY THE FOREMAN THAT HE WAS BEING LAID OFF FOR BRINGING IN THE UNION. THIS STATEMENT, IN ISOLATION, CONSTITUTES THE MOST SIGNIFICANT EVIDENCE OFFERED IN SUPPORT OF THE ALLEGATIONS OF THE COMPLAINT. THE ACTIVITIES OF LACROIX WERE NEVER BROUGHT HOME TO THE RESPONDENT IN THE EVIDENCE PRESENTED TO US NOR, INDEED, DO WE KNOW IF THE GRIEVORS WERE THE ONLY PEOPLE WHO REFUSED HIS INVITATION TO SIGN THE PETITION. IT WAS NOT, IN ANY EVENT, BASED ON THE CERTIFICATION APPLICATION. THE FOREMAN'S STATEMENT TO FOURNIER REFERRED TO ABOVE WAS MADE, HOWEVER, IN THE MIDST OF THE OTHER EXPLANATIONS AS TO THE CAUSE OF THE LAY-OFF. IT CANNOT BE GIVEN ANY MORE WEIGHT, IN OUR OPINION, THAN THESE ACCOMPANYING STATEMENTS. THESE ARE ENTIRELY COMPATIBLE WITH THE EVIDENCE OF THE RESPONDENT AND WITH FOURNIER'S OWN EVIDENCE WITH RESPECT TO THE SHORTAGE OF WORK ON THE HYDRAULIC TAIL GATES. IT MAY VERY WELL BE THAT THE ADVENT OF THE UNION MADE MORE ACUTE THE CONCERN OF THE RESPONDENT WITH THE ECONOMIC SITUATION AND CONSTITUTED AN ADDED FACTOR IN ITS DECISION TO ATTEMPT TO RECTIFY THE SITUATION BY LAYING OFF EMPLOYEES. LOOKED AT FROM THAT POINT OF VIEW, THE APPARENTLY INCONSISTENT STATEMENTS ATTRIBUTED TO THE FOREMAN ARE RECONCILABLE NOT ONLY WITH EACH OTHER, BUT ALSO WITH THE EVIDENCE OF THE RESPONDENT AND OF FOURNIER HIMSELF WITH RESPECT TO THE SHORTAGE OF WORK.

18. HAVING REGARD TO ALL THE EVIDENCE, WE FIND THE COMPLAINANT HAS FAILED TO DISCHARGE THE ONUS PLACED UPON IT TO SHOW BY SUBSTANTIAL EVIDENCE THAT THE LAY-OFF OF THE AGGRIEVED PERSONS WAS BECAUSE OF THEIR UNION MEMBERSHIP. IN THE CIRCUMSTANCES IT WOULD HARDLY BE REASONABLE TO EXPECT THE RESPONDENT TO HAVE TESSIER CONTINUE TO STOCK-PILE STAKES FOR WHICH THERE WERE NO ORDERS, OR TO KEEP FOURNIER ON THE PAY-ROLL WHEN THE JOB FOR WHICH HE WAS HIRED COULD NOT BE PERFORMED BECAUSE OF A LACK OF PARTS FROM THE SUPPLIER. IN THE ABSENCE OF PRODUCTION OF TRUCK BODIES THERE WAS NOTHING FOR LANTHIER TO PAINT. THE FACT THAT THE RESPONDENT MAY HAVE BEEN FULLY AWARE OF THEIR MEMBERSHIP IN THE UNION DOES NOT IMMUNIZE THE AGGRIEVED FROM THE NORMAL AND PROPER CONSEQUENCES OF DECISIONS REASONABLY BASED UPON ECONOMIC CONSIDERATIONS. THE AGGRIEVED ARE EQUALLY AS VULNERABLE IN SUCH MATTERS AS THE

SIX OTHER EMPLOYEES LAID OFF AT THE SAME TIME BUT FOR WHOM NO COMPLAINTS HAVE BEEN FILED.

19. THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFE:

JANUARY 25, 1968.

1. I AGREE GENERALLY WITH THE FACTS AS OUTLINED IN THE MAJORITY DECISION, BUT ON THE BASIS OF DUE CONSIDERATION OF ALL OF THE EVIDENCE IN THE INSTANT CASE, I DISSENT FROM THE CONCLUSIONS AND FINDINGS OF THE MAJORITY.
2. THE EVIDENCE IN THIS CASE IS SIMILAR TO THE EVIDENCE THAT THE BOARD HAS BECOME ACCUSTOMED TO OVER THE YEARS IN MATTERS OF THIS KIND.
3. THE COMPLAINANT UNION HAS ORGANIZED THE EMPLOYEES OF THE RESPONDENT. DURING THE PERIOD BETWEEN THE DATE OF APPLICATION FOR CERTIFICATION AND THE ACTUAL CERTIFICATION THERE IS A STRUGGLE GOING ON FOR THE MINDS OF MEN. THE COMPLAINANT UNION HAS CONVINCED THE MAJORITY OF THE EMPLOYEES THAT THEIR BEST INTEREST WOULD BE SERVED BY BEING REPRESENTED BY THE UNION. ON THE OTHER HAND AN EMPLOYEE WHO IS OPPOSED TO THE UNION, ONE MR. AURINAL LACROIX, CIRCULATES A PETITION AGAINST THE UNION. THIS PETITION IS CIRCULATED OPENLY IN THE PLANT, IN FULL VIEW OF MANAGEMENT, AND STRANGE THINGS HAPPEN TO THOSE EMPLOYEES WHO REFUSE TO SIGN THE PETITION, AND WHO, IN FACT, STATE TO MR. LACROIX THAT THEY ARE IN FAVOUR OF THE UNION.
4. THE AGGRIEVED FOURNIER WAS APPROACHED DURING WORKING HOURS BY LACROIX TO SIGN THE PETITION AGAINST THE UNION. FOURNIER REFUSED TO SIGN THE PETITION. FOURNIER WAS LAID OFF.
5. THE SECOND AGGRIEVED TESSIER TESTIFIED THAT LACROIX APPROACHED HIM TO SIGN THE PETITION. TESSIER REFUSED TO SIGN THE PETITION AND WAS LAID OFF. FURTHER TESTIMONY BY TESSIER WAS TO THE EFFECT THAT, AFTER HE WAS LAID OFF, LACROIX TELEPHONED HIM AND AGAIN ASKED HIM TO SIGN THE PETITION, AND AT THE SAME TIME TOLD HIM THAT IT WOULD BE BEST FOR HIM TO SIGN, BECAUSE THEN HE WOULD HAVE WORK.
6. THE THIRD AGGRIEVED PERSON, MR. LANTHIER, WAS CALLED INTO WORK ON OCTOBER 26TH. HE HITCH-HIKED THIRTY MILES TO WORK. NEAR THE PLANT HE WAS PICKED UP BY LACROIX WHO QUESTIONED HIM ABOUT THE UNION. LANTHIER TOLD LACROIX THAT HE THOUGHT THE UNION WAS A GOOD THING. LANTHIER GOT TO THE PLANT AND WITHIN A HALF HOUR OF HIS ARRIVAL HE WAS TOLD TO LEAVE BY THE FOREMAN.
7. LEO GRATTON, A FORMER EMPLOYEE OF THE RESPONDENT, TESTIFIED THAT HE WAS ACTIVE IN BRINGING THE UNION IN TO THE PLANT. WHILE HE HAD PREVIOUSLY HAD SOME DIFFERENCES WITH THE FOREMAN WITH REGARD TO CERTAIN WORK METHODS, NEVERTHELESS HE GOT ALONG WELL WITH HIM; HOWEVER,

IMMEDIATELY FOLLOWING THE APPLICATION FOR CERTIFICATION BY THE UNION, THE FOREMAN'S ATTITUDE CHANGED TOWARD HIM TO SUCH A HOSTILE DEGREE THAT HE (GRATTON) QUIT THE JOB.

8. FURTHER EVIDENCE AT THE HEARING WAS TO THE EFFECT THAT THE RESPONDENT COMPANY NEVER HAD A LAY-OFF PREVIOUSLY. ONE OF THE FOREMEN HAD TOLD THE AGGRIEVED FOURNIER THAT THE EMPLOYEES HAD "PLAYED A DIRTY TRICK ON THE BOSS WHEN WE TRIED TO GET THE UNION IN, AND THAT WAS THE REASON I WAS LAID OFF."

9. THE UNION HAD CALLED SUBSTANTIAL DIRECT EVIDENCE TO ESTABLISH ITS SERIOUS CHARGES THAT THE RESPONDENT HAD LAID OFF AND OTHERWISE DEALT WITH THE AGGRIEVED CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

10. BY WAY OF REPLY TO THE CASE PRESENTED BY THE COMPLAINANT UNION THE RESPONDENT COMPANY RELIED ON THE EVIDENCE OF ONLY ONE WITNESS. THIS WITNESS, PIERRE JAUVIN, TESTIFIED THAT HE WAS A DIRECTOR AS WELL AS AN ADMINISTRATOR OF THE COMPANY AND ACTED AS COMPANY SECRETARY TO HIS BROTHER, WHO ALSO WAS ONE OF THE ADMINISTRATORS OF THE COMPANY. MR. JAUVIN RELIED HEAVILY ON COMPANY STATISTICS AND ON AN AUDITORS' REPORT WHICH HAD BEEN COMPLETED THE DAY BEFORE THE INSTANT HEARING; IN OTHER WORDS THE LAY-OFFS IN OCTOBER, THE ANTI-UNION ACTIVITY BY LACROIX, AND THE ANTI-UNION STATEMENTS AND ACTIVITY BY THE FOREMEN DURING THE PERIOD UNDER REVIEW WERE ALL TO BE MET AND ANSWERED BY WORK VOLUME STATISTICS AND A DOCUMENT PREPARED BY SOME AUDITOR FAR REMOVED FROM THE STRUGGLE IN THE PLANT IN OCTOBER AND WHO HAD JUST COMPLETED HIS AUDIT ON DECEMBER 7TH, THE DAY PRIOR TO THE HEARING.

11. WE ARE ASKED TO BELIEVE THAT THIS SMALL COMPANY WHICH DECIDES IN SEPTEMBER, 1967, TO EXPAND ITS OPERATIONS, AND IN PREPARATION FOR THIS EXPANSION GOES TO THE BANK TO GET MONEY TO ALLOW ITS EXPANSION, SUBSEQUENTLY AUTHORIZES ITS ACCOUNTANT TO AUDIT THE BOOKS AND IS GREATLY DISTURBED AND SURPRISED TO FIND FROM THE PRELIMINARY REPORT OF THE AUDITOR IN THE SECOND WEEK OF OCTOBER (WHICH IS THE PERIOD THAT THE BATTLE FOR THE MEN'S LOYALTY AND MINDS IS IN FULL FLOW) THAT THE COMPANY WHICH INTENDS TO EXPAND IS ACTUALLY LOSING MONEY. IN REPLY TO THE SUBSTANTIAL CASE PRESENTED BY THE COMPLAINANTS' WITNESSES, THE RESPONDENT FINDS IT SUFFICIENT TO REPLY TO THE CASE WITH THE AUDITORS' REPORT, THE COMPLEX STATISTICS, AND THE STATEMENT BY PIERRE JAUVIN THAT THE LAY-OFFS HAD NO CONNECTION WITH UNION ACTIVITY.

12. THE UNCONTRADICTED EVIDENCE BY THE WITNESSES ON BEHALF OF THE APPLICANT IS THAT LACROIX PURSUED AN AGGRESSIVE ANTI-UNION CAMPAIGN IN THE PLANT, AND THAT THOSE PEOPLE WHO REFUSED TO SIGN AGAINST THE UNION WERE LAID OFF. IN ONE INSTANCE HE THREATENED ONE EMPLOYEE TO THE EFFECT THAT HE HAD BETTER SIGN AGAINST THE UNION IF HE WANTED WORK WITH THE COMPANY.

13. THE COMPANY FOREMAN WAS AWARE OF LACROIX'S ANTI-UNION ACTIVITIES IN THE PLANT. TO ADD TO THIS UNLAWFUL ACTIVITY THE FOREMAN OPENLY DECLARES TO ONE OF THE EMPLOYEES THAT HE IS BEING LAID OFF BECAUSE OF HIS UNION ACTIVITY.

14. THE FOREGOING IS THE UNCONTRADICTED EVIDENCE OF THE APPLICANT, AND THE COMPANY CHOOSES NOT TO ANSWER THIS DAMAGING EVIDENCE.

15. THE AGGRIEVED EMPLOYEES ARE CRYING OUT FOR JUSTICE FROM THIS BOARD IN THIS CASE. THE ACTS AND THREATS OF LACROIX AND THE FOREMAN, WHICH IN MY OPINION ARE UNLAWFUL, ARE SUCH THAT, IF THESE ACTIVITIES ARE TO GO WITHOUT GRAVE CONSIDERATION AND CONDEMNATION ON MY PART, THEN I, AS A BOARD MEMBER, WOULD BE DERELICT IN MY DUTY WITH REGARD TO ENFORCING THE ACT AND WITH REGARD TO ENCOURAGING RESPONSIBLE LAWFUL CONDUCT IN THE WIDE AND VITAL FIELD OF LABOUR RELATIONS WHICH SO INTIMATELY AFFECTS THE SENSITIVE AREA OF HUMAN RIGHTS AND DIGNITY.

16. ON THE BASIS OF THE OVERWHELMING EVIDENCE IN THIS CASE TO THE EFFECT THAT THE AGGRIEVED WERE DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE ACT, I HAVE NO HESITATION IN FINDING THAT THE AGGRIEVED WERE LAID OFF AND OTHERWISE DEALT WITH BY THE RESPONDENT BECAUSE THEY WERE EXERCISING THEIR LAWFUL RIGHTS TO BELONG TO THE UNION OF THEIR CHOICE AND ENGAGE IN ITS LAWFUL ACTIVITIES.

17. I WOULD ORDER REINSTATEMENT WITH FULL COMPENSATION TO THE AGGRIEVED FOR THE LOSS SUFFERED BY THEM DURING THE PERIOD OF THEIR UNJUST AND UNLAWFUL LAY-OFF.

13862-67-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. CITY PARKING CANADA LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: R. B. CUMINE, J. ROBINSON AND K. F. BATES FOR THE COMPLAINANT, W. Z. ESTEY, Q.C., AND W. M. TEMPLE FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 29, 1968.

1. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT COMPLAINS THAT ON OR ABOUT OCTOBER 30TH, 1967, THE AGGRIEVED PERSON, KENNETH BATES, WAS DISCHARGED BY JOSEPH BURCH, THE

OPERATIONS MANAGER OF THE RESPONDENT, CONTRARY TO THE PROVISIONS OF SECTIONS 48, 50(A), 50(B), 50(C), 52 AND 59(1) OF THE LABOUR RELATIONS ACT.

3. THE EVIDENCE RELEVANT TO THIS COMPLAINT IS SET OUT BELOW. THE RESPONDENT OPERATES UPWARDS OF SEVENTY PARKING LOTS AND GARAGES THROUGHOUT METROPOLITAN TORONTO. IT EMPLOYS APPROXIMATELY ONE HUNDRED PARKING LOT ATTENDANTS TO RUN ITS OPERATIONS. PRIOR TO JUNE OF 1967 THE SYSTEM USED BY THE RESPONDENT FOR THE HANDLING OF CASH TAKEN IN BY THE PARKING LOT ATTENDANTS WAS AS FOLLOWS. AT THE END OF EACH DAY THE PARKING LOT ATTENDANTS WOULD TOTAL THE CASH RECEIVED THAT DAY, CHECK IT AGAINST THE PARKING TICKET RECEIPTS, PLACE THE CASH AND RECEIPTS IN AN ENVELOPE AND DEPOSIT THE ENVELOPE IN ONE OF THREE VAULTS LOCATED ON PREMISES OF THE RESPONDENT IN VARIOUS PARTS OF THE CITY. THE FOLLOWING MORNING SUPERVISORS IN THE EMPLOY OF THE RESPONDENT WOULD PICK UP THE ENVELOPES FROM THE VAULTS AND TAKE THEM TO THE RESPONDENT'S MAIN OFFICE ON ADELAIDE STREET. CLERKS EMPLOYED AT THE MAIN OFFICE WOULD CHECK THE CASH RECEIVED AGAINST THE PARKING TICKET RECEIPTS. THE TOTAL CASH RECEIVED FROM THE PREVIOUS DAY'S OPERATIONS WOULD THEN BE DEPOSITED IN THE BANK. UPON THE RECOMMENDATION OF A FIRM OF MANAGEMENT CONSULTANTS, JOSEPH BURCH AND JOHN WALKER, THE GENERAL MANAGER OF THE RESPONDENT, INTRODUCED A NEW SYSTEM FOR THE HANDLING OF CASH BY PARKING LOT ATTENDANTS AS A MEASURE DESIGNED TO IMPROVE EFFICIENCY AND TO AFFECT AN ECONOMY. UNDER THE NEW SYSTEM THE PARKING LOT ATTENDANTS CONTINUED TO TOTAL THE CASH RECEIVED AGAINST THE PARKING TICKET RECEIPTS AT THE END OF EACH DAY IN THE SAME MANNER AS BEFORE. THEY WOULD THEN PUT THE MONEY RECEIPTS IN CANVAS BAGS PROVIDED BY THE BANK USED BY THE RESPONDENT AND PLACE THE BAGS IN THE NIGHT DEPOSITORY OF THE NEAREST BRANCH OF THE BANK. THE RESPONDENT COMMENCED TO IMPLEMENT THE NEW PROCEDURE IN THE LATTER PART OF JUNE. THE EVIDENCE IS NOT ENTIRELY CLEAR, HOWEVER, IT APPEARS THAT THE NEW SYSTEM WAS NOT FULLY IN EFFECT THROUGHOUT THE RESPONDENT'S OPERATIONS IN TORONTO UNTIL SOME TIME DURING THE AUTUMN OF 1967.

4. IN EARLY SEPTEMBER, WALKER HAD A MEETING WITH KENNETH DOYLE, THE PRESIDENT OF SCOTTISH & YORK INSURANCE CO. LIMITED. THIS COMPANY HAS ALL OF THE INSURANCE CARRIED BY THE RESPONDENT. THIS INCLUDES PUBLIC LIABILITY AND PROPERTY DAMAGE AND ALSO SURETY BONDS COVERING THE SUPERVISORS OF THE RESPONDENT WHO, UNDER THE OLD METHOD OF HANDLING CASH, PICKED UP THE ENVELOPES DEPOSITED BY THE PARKING LOT ATTENDANTS IN THE RESPONDENT'S OWN VAULTS. THE PURPOSE OF THE MEETING WAS TO DISCUSS THE DETERIORATING POSITION OF THE RESPONDENT AS A RISK DUE TO THE INCREASING NUMBER OF CLAIMS BEING MADE AGAINST THE RESPONDENT'S INSURANCE. DURING THE COURSE OF THIS CONVERSATION WALKER TOLD DOYLE OF THE CHANGE IN THE METHOD OF HANDLING CASH BY PARKING LOT ATTENDANTS WHICH WAS BEING IMPLEMENTED BY THE RESPONDENT. WALKER WAS ADVISED BY DOYLE THAT, BECAUSE OF THE NEW SYSTEM, HIS COMPANY WOULD REQUIRE ALL OF THE PARKING LOT ATTENDANTS TO BE BONDED. DOYLE FURTHER STIPULATED THAT ANY OF THE ATTENDANTS WHO, AS A RESULT OF THE INSURANCE COMPANY'S INVESTIGATION, WERE DEEMED TO BE INELIGIBLE FOR A FIDELITY BOND COULD

NOT REMAIN IN THE EMPLOY OF THE RESPONDENT. OTHERWISE THE INSURANCE COMPANY WOULD BE OBLIGED TO TERMINATE ALL OF ITS INSURANCE COMMITMENTS WITH THE RESPONDENT.

5. BY LETTER DATED OCTOBER 23RD, 1967, DOYLE ADVISED WALKER THAT THE INSURANCE COMPANY WOULD BE UNABLE TO ISSUE A FIDELITY BOND FOR BATES. BATES IN HIS TESTIMONY ADMITTED THAT HE HAD TWO CRIMINAL CONVICTIONS. DOYLE ALSO TESTIFIED THAT HIS COMPANY'S INVESTIGATION HAD REVEALED THIS RECORD. IN HIS LETTER OF OCTOBER 23RD, DOYLE REMINDED WALKER OF THE STIPULATION THE COMPANY HAD MADE CONCERNING THE RETENTION IN EMPLOYMENT OF EMPLOYEES WHO WERE NOT ELIGIBLE FOR BONDING. BY LETTER DATED OCTOBER 25TH, THE INSURANCE COMPANY NOTIFIED WALKER THAT IT WAS UNABLE TO ISSUE A BOND TO ANOTHER NAMED EMPLOYEE.

6. JACK ROBINSON, THE PRESIDENT OF THE COMPLAINANT UNION, WAS SHORTLY THEREAFTER NOTIFIED BY THE COMPANY OF THE DECISION OF THE BONDING COMPANY ABOUT BATES AND THE OTHER EMPLOYEE AND OF THE STIPULATION ATTACHED BY THE INSURANCE COMPANY CONCERNING ITS CONTINUED COVERAGE OF THE RESPONDENT ON ALL OF ITS INSURANCE. ROBINSON IN TURN APPRAISED BATES OF THE SITUATION. ON OCTOBER 30TH BURCH INFORMED BATES THAT HIS EMPLOYMENT WITH THE RESPONDENT WAS BEING TERMINATED BECAUSE ITS INSURANCE COMPANY WAS NOT PREPARED TO ISSUE A FIDELITY BOND COVERING HIM.

7. BATES HAD BEEN EMPLOYED AS A PARKING LOT ATTENDANT BY THE RESPONDENT, WITH THE EXCEPTION OF A NUMBER OF PERIODS WHEN HE VOLUNTARILY LEFT THE COMPANY'S EMPLOY, SINCE AROUND 1960. HE WAS ACTIVE IN THE COMPLAINANT'S ORGANIZING CAMPAIGN IN AUGUST OF 1967 AND ATTENDED AT THE BOARD HEARING OF THE COMPLAINANT'S CERTIFICATION APPLICATION ON BEHALF OF THE UNION. HE HAD ALSO BEEN ON THE COMPLAINANT'S BARGAINING COMMITTEE DURING THE CURRENT NEGOTIATIONS WITH THE RESPONDENT FOR A COLLECTIVE AGREEMENT.

8. THE COMPLAINANT WAS CERTIFIED BY THE BOARD ON AUGUST 30TH, 1967 AS BARGAINING AGENT FOR ALL OF THE EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO WITH CERTAIN EXCEPTIONS THAT ARE NOT HERE MATERIAL. ON SEPTEMBER 18TH, 1967, THE COMPLAINANT GAVE NOTICE TO THE RESPONDENT OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. AS HAS BEEN STATED, THE RESPONDENT COMMENCED IN JUNE 1967 TO IMPLEMENT THE NEW SYSTEM UNDER WHICH THE PARKING LOT ATTENDANTS, ALL OF WHOM ARE INCLUDED IN THE BARGAINING UNIT, WOULD HANDLE CASH. WHILE THERE IS NO EVIDENCE THAT THE ATTENDANTS WERE FORMALLY NOTIFIED OF THE NEW SYSTEM, IT IS REASONABLE TO ASSUME FROM ALL OF THE EVIDENCE THAT THE ATTENDANTS WERE AWARE OF THE CHANGE THAT WAS BEING IMPLEMENTED. THE CHANGE, IN FACT, WAS ONE OF WORKING PROCEDURE AND NOT A CHANGE IN THE ACTUAL WORKING CONDITIONS OF THE ATTENDANTS. AT THE BEGINNING OF SEPTEMBER, 1967, THE RESPONDENT AGREED UPON THE BONDING REQUIREMENTS FOR PARKING LOT ATTENDANTS WHICH ITS INSURANCE COMPANY INSISTED UPON AS A RESULT OF THE CHANGE IN THE METHOD OF HANDLING CASH. MOREOVER, THE INSURANCE COMPANY SET IN MOTION THE MACHINERY TO AFFECT THE BONDING

OF THE ATTENDANTS INCLUDING HAVING THEM COMPLETE AN APPLICATION FOR BONDING. IT IS NOT CLEAR FROM THE EVIDENCE EXACTLY WHEN THESE APPLICATIONS WERE CIRCULATED AMONG THE ATTENDANTS. IN ANY EVENT, THE BONDING REQUIREMENT WAS AGREED UPON AND ITS IMPLEMENTATION COMMENCED PRIOR TO NOTICE BEING GIVEN ON SEPTEMBER 18TH. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE RESPONDENT DID NOT ALTER THE CONDITIONS OF EMPLOYMENT OF THE EMPLOYEES IN THE BARGAINING UNIT WITHIN THE MEANING OF SECTION 59(1) OF THE ACT. ALTHOUGH IT MAY BE THAT BATES AS AN INDIVIDUAL ATTENDANT WAS NOT REQUIRED TO OPERATE UNDER THE NEW SYSTEM AND HIS INELIGIBILITY FOR BONDING DID NOT BECOME KNOWN UNTIL AFTER NOTICE WAS GIVEN UNDER SECTION 11, IN THE CONTEXT OF HIS BEING A MEMBER OF THE BARGAINING UNIT, THE BOARD FURTHER FINDS THAT BATES' CONDITIONS OF EMPLOYMENT WERE NOT ALTERED WITHIN THE MEANING OF THE SECTION.

9. WALKER TESTIFIED THAT HE HAD NO KNOWLEDGE OF BATES' CRIMINAL RECORD PRIOR TO AGREEING TO THE BONDING REQUIREMENT OF THE RESPONDENT'S INSURANCE COMPANY. ACCORDING TO BURCH, WHILE HE HAD HEARD RUMOURS CONCERNING BATES HAVING A RECORD, HE HAD NO REAL KNOWLEDGE OF THIS FACT UNTIL A LATER DATE. MOREOVER, NEITHER WALKER NOR BURCH HAD ANY KNOWLEDGE OF THE STANDARDS THAT THE INSURANCE COMPANY APPLIED IN THE ISSUING OF FIDELITY BONDS. THERE IS NO QUESTION THAT THE RESPONDENT WAS AWARE OF BATES' ACTIVE ROLE IN THE COMPLAINANT UNION. FOR THE COMPLAINANT TO SUCCEED IN THIS COMPLAINT, HOWEVER, IT WOULD BE NECESSARY FOR THE BOARD TO FIND THAT THE RESPONDENT HAD INSTITUTED THE NEW SYSTEM FOR THE HANDLING OF CASH BY ITS PARKING LOT ATTENDANTS WITH THE KNOWLEDGE THAT ITS INSURANCE COMPANY WOULD REQUIRE ALL THE ATTENDANTS TO BE BONDED AND FURTHER THAT BATES WOULD NOT BE ELIGIBLE FOR A BOND. THE EVIDENCE DOES NOT SUPPORT SUCH A CONCLUSION. THE COMPLAINANT THEREFORE HAS FAILED TO SATISFY THE BOARD THAT BATES WAS DISCHARGED BECAUSE OF HIS UNION ACTIVITIES IN CONTRAVENTION OF THE ACT.

10. THE COMPLAINT, ACCORDINGLY, IS DISMISSED.

13871-67-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. E-ZEE PARKING LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: ROBIN B. CUMINE, PETER HERAKOVICH FOR THE COMPLAINANT, WILLIAM TEMPLE, E. RUMACK FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 3, 1968.

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSON, PETER HERADOVICH, WAS DISCHARGED ON NOVEMBER 3RD, 1967 BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) AND (C) OF THE LABOUR RELATIONS ACT AND REQUESTS THAT THE AGGRIEVED PERSON BE REINSTATED WITH COMPENSATION FOR LOSS OF PAY. THE RESPONDENT DENIES THE COMPLAINT.

3. THE RESPONDENT IS THE OWNER AND OPERATOR OF A NUMBER OF PARKING LOTS IN TORONTO. THE AGGRIEVED PERSON AT THE TIME OF HIS DISCHARGE WAS A PARKING LOT ATTENDANT FOR THE RESPONDENT AT ITS LOT ON KING STREET WEST AT SPADINA AVENUE IN TORONTO. HE HAD WORKED FOR THE RESPONDENT AT ANOTHER OF ITS LOCATIONS FOR A TIME PRIOR TO MARCH 1967 WHEN THAT LOCATION WAS CLOSED. ALTHOUGH HE WAS OFFERED OTHER WORK WITH THE RESPONDENT, HE VOLUNTARILY LEFT THEIR EMPLOYMENT. HE WAS HIRED AGAIN BY THE RESPONDENT IN AUGUST OF THIS YEAR. THE PARKING LOT, WHICH WOULD ACCOMMODATE APPROXIMATELY 70 CARS, WAS ATTENDED ONLY BY THE AGGRIEVED PERSON WHO WORKED ON A 9 HOUR DAY, 45 HOUR WEEK SCHEDULE. THE COMPLAINANT HAD MADE AN APPLICATION FOR CERTIFICATION COVERING CERTAIN EMPLOYEES OF THE RESPONDENT BUT ON OCTOBER 27TH, 1967 REQUESTED ITS WITHDRAWAL FROM THE BOARD. SUBSEQUENTLY, ON OCTOBER 31ST, 1967, THE BOARD DISMISSED THE APPLICATION.

4. MR. HERAKOVICH TESTIFIED THAT HE WAS DISCHARGED BY MR. EDWARD RUMACK, THE SECRETARY AND MANAGER OF THE RESPONDENT, WITHOUT WARNING AT 3:00 P.M. ON NOVEMBER 3RD, 1967, AT WHICH TIME RUMACK GAVE HIM A CHEQUE FOR HIS WAGES AND HIS UNEMPLOYMENT INSURANCE BOOK. HE STATED THAT RUMACK HAD SHOWED HIM AT THAT TIME A COPY OF A LETTER WHICH THE UNION HAD SENT TO THE BOARD REQUESTING THE WITHDRAWAL OF THE APPLICATION FOR CERTIFICATION AND HAD SAID TO HIM WORDS TO THE EFFECT THAT THE UNION WAS FINISHED, HE WAS FINISHED AND HE COULD GO TO THE UNION AND GET HIS DOLLAR BACK. PREVIOUS TO THIS OCCASION ON OCTOBER 27TH, 1967, MR. GOTLIEB, A PERSON WHOM HERAKOVICH KNEW WAS CONNECTED WITH THE RESPONDENT AS HE HAD TAKEN ORDERS FROM HIM BEFORE, (SUBSEQUENTLY IDENTIFIED AS BEING A PARTNER IN THE BUSINESS) TOLD HIM THAT HE DIDN'T WANT ANY OF HIS MEN TO JOIN THE UNION. MR. HERAKOVICH TOLD THE BOARD THAT IN FACT HE WAS A MEMBER OF THE COMPLAINANT UNION AT THE MATERIAL TIMES INVOLVED IN THIS MATTER. HE FURTHER STATED THAT BOTH GOTLIEB AND RUMACK SEEMED TO BE HAPPY WITH HIS WORK BEFORE THEY KNEW ABOUT THE UNION BUT THEIR ATTITUDE TOWARD HIM CHANGED THEREAFTER. HE DENIED TELLING THE RESPONDENT AT THE TIME HE WAS HIRED THAT HE WAS TAKING THIS JOB ON A TEMPORARY BASIS ONLY. HE ADMITTED ON CROSS-EXAMINATION THAT HE HAD HAD SOME DIFFICULTIES WITH CUSTOMERS ON THE LOT PARTICULARLY WITH RESPECT TO A MRS. ETHRA DARVAS WHO ACCUSED HIM OF MOVING AND SCRATCHING HER CAR. HOWEVER, HE DENIED USING ANY ABUSIVE LANGUAGE TO HER OR ANYONE ELSE. THE INCIDENT CONCERNING MRS. DARVAS TOOK PLACE TWO OR THREE WEEKS PRIOR TO HIS DISCHARGE. HE HAD NOT RECEIVED ANY WARNINGS ABOUT HIS ACTIONS OR ATTITUDES FROM THE RESPONDENT AND THE RESPONDENT DID NOT TELL HIM THAT HE WAS BEING DISCHARGED BECAUSE OF PROBLEMS WITH CUSTOMERS AT THAT LOT. MR. HERAKOVICH WAS QUITE DEFINITE THAT RUMACK HAD STARTED THE CONVERSATION ABOUT THE UNION AT THE TIME OF HIS DISCHARGE. HE TESTIFIED THAT HIS NET PAY FOR ONE

WEEK'S WORK WAS \$60.03. HE HAD NOT BEEN RECEIVING UNEMPLOYMENT INSURANCE BENEFITS SINCE HIS DISCHARGE BECAUSE HE HAD PREVIOUSLY USED UP HIS CREDITS.

5. MR. RUMACK, TESTIFIED THAT HERAKOVICH WAS HIRED IN AUGUST, 1967 AND THERE WERE DISCUSSIONS AT THAT TIME AS TO HOW LONG HE WOULD STAY ON THE JOB AS HERAKOVICH HAD STATED THAT HE DID NOT WANT A FULL TIME JOB. MR. RUMACK STATED THAT HERAKOVICH WAS CONSIDERED TO BE A RELIABLE EMPLOYEE IN THE PERFORMANCE OF HIS DUTIES BUT HE WAS NOT PLEASED WITH THE PROGRESS OF THAT PARKING LOT AND BEGAN TO GET COMPLAINTS CONCERNING HERAKOVICH FROM CUSTOMERS ON THE LOT. THE RESPONDENT MADE REFERENCE TO A PARTICULAR INCIDENT INVOLVING A CAR OWNED BY SUPERFINE IMPORTS CO. AND LEAD EVIDENCE ON THIS COMPLAINT THROUGH MRS. DARVAS. MR. RUMACK CLAIMED HE HAD POINTED OUT TO HERAKOVICH DIFFICULTIES ABOUT CERTAIN CUSTOMERS SO HE WOULD KNOW HOW TO HANDLE THEM. HOWEVER, ON CROSS-EXAMINATION HE CHANGED THIS STATEMENT TO MEAN THAT HE POINTED OUT PARKING SITUATIONS TO HERAKOVICH. HE STATED THAT THIS COMPLAINT WAS DISCUSSED WITH HERAKOVICH A DAY OR TWO AFTER THE OCCURRENCE. MR. RUMACK ALSO STATED THAT THE RESPONDENT WAS INTERESTED IN OBTAINING A PERMANENT EMPLOYEE FOR THE LOT. AS ONE WAS THEN AVAILABLE AND BECAUSE OF THE CUSTOMER COMPLAINTS CONCERNING HERAKOVICH HE AND GOTLIEB DECIDED TO DISCHARGE HIM. MR. RUMACK DENIED KNOWING THAT HERAKOVICH WAS A MEMBER OF THE UNION AND TALKING TO HERAKOVICH ABOUT THE UNION. HE FURTHER STATED THAT IN THE CONVERSATION WITH HERAKOVICH AT THE TIME OF HIS DISCHARGE ANY MENTION OF THE UNION WAS MADE BY HERAKOVICH. ON CROSS-EXAMINATION, RUMACK ADMITTED THAT HE HAD THE UNION'S LETTER WITH HIM AND SHOWED IT TO ALL THE EMPLOYEES INCLUDING HERAKOVICH BUT HE COULD NOT STATE FOR SURE WHETHER HE HAD SHOWED THIS TO HERAKOVICH ON NOVEMBER 3RD OR SOME DAYS EARLIER. HE SAID THAT ALTHOUGH HE SHOWED THE LETTER TO THE EMPLOYEES HE HAD NOT DISCUSSED IT WITH ANY OF THEM. HE DID ADMIT THAT HE AND GOTLIEB HAD DISCUSSED THE APPLICATION OF THE UNION BUT DID NOT RECALL TALKING ABOUT ANY PARTICULAR EMPLOYEES IN REFERENCE TO IT. ALTHOUGH AS HE STATED, HE AND GOTLIEB EACH TOOK CARE OF DIFFERENT LOTS IN THE CITY, GOTLIEB COULD HAVE ATTENDED AT THE LOT WHERE HERAKOVICH WAS WORKING AND SPOKEN TO HIM.

6. THERE IS CONSIDERABLE CONFLICT OF TESTIMONY IN THIS CASE WHEREBY THE AGGRIEVED PERSON CLAIMS HE HAS BEEN DISCHARGED BECAUSE OF HIS MEMBERSHIP IN THE UNION AND THE RESPONDENT DENIES HIS COMPLAINT STATING THAT HE WAS DISCHARGED BECAUSE OF CUSTOMER COMPLAINTS ABOUT HIM AND DISSATISFACTION WITH HIS WORK. IN ASSESSING THE WEIGHT TO BE GIVEN TO THE EVIDENCE PRESENTED AT THE HEARING, THE BOARD MUST TAKE INTO ACCOUNT ALL THE CIRCUMSTANCES INCLUDING AMONG OTHERS, THE CREDIBILITY OF THE WITNESSES, THE NATURE AND LIKELIHOOD OF THE ACTIONS OF THE PARTIES FOR THE REASONS GIVEN, THE TIMING AND MANNER OF DISCHARGE AND THE FACT THAT THE TRUE REASON FOR THE DISCHARGE USUALLY LIES SOLELY WITHIN THE KNOWLEDGE OF THE EMPLOYER. THE COMPLAINANT, HOWEVER, HAS A PRIMARY OBLIGATION TO ESTABLISH THE MERITS OF THE COMPLAINT ON A REASONABLE BASIS BY SUBSTANTIAL EVIDENCE.

7. THE RESPONDENT WAS OBVIOUSLY AWARE OF THE UNION'S APPLICATION FOR CERTIFICATION AND IT IS REASONABLE TO ASSUME THEREFORE, ALTHOUGH DENIED BY RUMACK, THAT THE RESPONDENT CONSIDERED WHO OF THEIR EMPLOYEES MIGHT BE MEMBERS OF OR ACTIVE IN THE UNION. WE HAVE THE STATEMENT OF RUMACK THAT HE DID NOT KNOW HERAKOVICH WAS A MEMBER OF THE UNION NOR WAS HE DISCHARGED FOR UNION ACTIVITY. THE RESPONDENT INSISTS THAT ALTHOUGH HERAKOVICH HAD BEEN CONSIDERED A RELIABLE EMPLOYEE, BECAUSE OF THE ONE COMPLAINT DESCRIBED IN EVIDENCE WHICH TOOK PLACE TWO OR THREE WEEKS PRIOR TO HIS DISCHARGE AND OF A SOMEWHAT WEAKER DECLARATION THAT IT WANTED TO HAVE A PERMANENT EMPLOYEE FOR THIS LOT, HE WAS DISCHARGED WITHOUT NOTICE OR WARNING AT 3:00 P.M. ON A FRIDAY AFTERNOON. ON THE OTHER HAND, THERE IS UNCONTRADICTED EVIDENCE THAT ON OCTOBER 27TH, GOTLIEB, WHO ACCORDING TO RUMACK'S EVIDENCE WOULD NORMALLY BE SUPERVISING LOTS OTHER THAN THE ONE AT WHICH HERAKOVICH WAS WORKING ATTENDED THIS LOT AND TOLD HERAKOVICH THAT HE DID NOT WANT ANY OF HIS MEN TO JOIN THE UNION. ALSO AT THE TIME OF HIS DISCHARGE RUMACK SHOWED HERAKOVICH A COPY OF THE LETTER FROM THE UNION REQUESTING WITHDRAWAL OF ITS APPLICATION. TO MAINTAIN THAT RUMACK, ALTHOUGH MAKING A SPECIFIC POINT OF SHOWING THIS LETTER TO THE EMPLOYEES DID NOT SAY ANYTHING ABOUT THAT LETTER TO THEM AT THAT TIME, IS NOT IN OUR OPINION REASONABLE. IN THIS REGARD THE DESCRIPTION GIVEN BY HERAKOVICH OF THE CONVERSATION WHICH TOOK PLACE BETWEEN HIM AND RUMACK WOULD APPEAR TO BE MORE ACCURATE.

8. HAVING CONSIDERED ALL OF THE EVIDENCE, INCLUDING THE REASONS OF THE RESPONDENT FOR ITS ACTIONS IN THIS MATTER, THE DEMEANOUR OF THE WITNESSES, THE MANNER IN WHICH THE EVIDENCE GIVEN AND THE CREDIBILITY OF THE WITNESSES, WE ARE CONSTRAINED TO ACCEPT THE EVIDENCE OF HERAKOVICH WHERE IT IS IN CONFLICT WITH THE EVIDENCE OF RUMACK. THERE IS THEN, SUBSTANTIAL EVIDENCE FROM WHICH AN INFERENCE MAY BE DRAWN THAT HERAKOVICH'S UNION MEMBERSHIP WAS AN IMPORTANT FACTOR IN HIS DISCHARGE. ACCORDINGLY, THE BOARD FINDS ON THE BALANCE OF PROBABILITIES THAT IN DISCHARGING PETER HERAKOVICH THE RESPONDENT ACTED CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

9. AS TO THE MATTER OF COMPENSATION FOR THE AGGRIEVED PERSON, THE BOARD IS NOT SATISFIED FROM THE EVIDENCE THAT HERAKOVICH TOOK PROPER AND ACTIVE STEPS IN ORDER TO MITIGATE HIS LOSSES SUBSEQUENT TO THE DATE OF HIS DISCHARGE AND NO ORDER WILL BE MADE AS TO COMPENSATION FOR LOSS OF EARNINGS.

10. THE BOARD THEREFORE DETERMINES THAT THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY PETER HERAKOVICH IN THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE RECEIVED AT THE TIME OF HIS DISCHARGE ON NOVEMBER 3RD, 1967.

13895-67-U: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. STANDARD CHEMICAL LIMITED (RESPONDENT).

BEFORE: J.F.W. WEATHERILL, VICE-CHAIRMAN AND BOARD MEMBERS
J.E.C. ROBINSON AND O. HODGES.

APPEARANCES AT HEARING: W.W. TILLER, E. McDONALD, W. RILEY FOR THE APPLICANT, D.J.D. SIMS FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 18, 1968.

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS WERE DISCHARGED BY THE RESPONDENT ON NOVEMBER 7TH, 1967 BECAUSE THEY HAD JOINED THE COMPLAINANT TRADE UNION. IT IS THE CASE THAT ON THE MORNING OF NOVEMBER 7TH THE SIX AGGRIEVED PERSONS HAD JOINED THE TRADE UNION AND THAT LATER THAT MORNING THEY HAD BEEN DISCHARGED BY THE RESPONDENT. THERE IS ALSO EVIDENCE TO SUPPORT THE CONCLUSION THAT THE RESPONDENT WAS ANTAGONISTIC TO THE TRADE UNION AND MIGHT WELL HAVE TAKEN ACTION AGAINST THE AGGRIEVED PERSONS ON THIS ACCOUNT. THE ISSUE IN THESE PROCEEDINGS HOWEVER, IS WHETHER THE RESPONDENT DID IN FACT DEAL WITH THE AGGRIEVED PERSONS CONTRARY TO THE LABOUR RELATIONS ACT AND IN PARTICULAR WHETHER THEIR DISCHARGE WAS BECAUSE OF THEIR UNION ACTIVITY.

3. THE EVIDENCE BEFORE THE BOARD SUPPORTS THE RESPONDENT'S CONTENTION THAT THE AGGRIEVED PERSONS WERE DISCHARGED FOR CAUSE. THE JURISDICTION OF THIS BOARD IN PROCEEDINGS SUCH AS THESE HAS OFTEN BEEN CONTRASTED WITH THAT OF AN ARBITRATION BOARD WHICH IS FREQUENTLY FACED WITH THE QUESTION WHETHER AN EMPLOYEE HAS BEEN DISCHARGED FOR REASONABLE CAUSE. SUCH A QUESTION IS NOT BEFORE THIS BOARD ALTHOUGH IN A PROPER CASE AN INFERENCE MAY BE DRAWN FROM THE ABSENCE OF REASONABLE CAUSE FOR AN AGGRIEVED PERSON'S DISMISSAL. IF THE INSTANT CASE WERE BEFORE A BOARD OF ARBITRATION, IT MAY BE THAT SUCH A TRIBUNAL WOULD BE OF THE OPINION THAT THERE HAD NOT BEEN REASONABLE CAUSE FOR DISMISSAL. IT WOULD BE CLEAR, HOWEVER, THAT SUBSTANTIAL GROUNDS FOR DISCIPLINE EXISTED. IN SUCH CIRCUMSTANCES IT IS NOT FOR THIS BOARD (AS IT WOULD BE FOR A BOARD OF ARBITRATION) TO PASS UPON THE APPROPRIATENESS OF THE ACTION TAKEN BY THE RESPONDENT.

4. THE GROUND FOR DISCIPLINE IN THE INSTANT CASE WAS THE FAILURE OF EACH OF THE AGGRIEVED PERSONS TO REPORT FOR WORK AND CARRY OUT HIS SCHEDULED ASSIGNMENTS. THE AGGRIEVED PERSONS HAVING FORGATHERED IN THE EARLY MORNING OF NOVEMBER 7TH AND HAVING DISCUSSED VARIOUS MATTERS

RELATING TO THEIR EMPLOYMENT, PROCEEDED TO THE UNION OFFICE RATHER THAN TO THEIR JOBS. THE RESPONDENT WAS ABLE TO CARRY ON ITS OPERATIONS ONLY THROUGH ITS MANAGEMENT PERSONNEL AND LATER IN THE MORNING BY HIRING NEW EMPLOYEES. ANGERED QUITE REASONABLY BY THE ABSENCE OF THE AGGRIEVED PERSONS, THE RESPONDENT DISCHARGED THEM AND PROCEEDED TO HIRE NEW EMPLOYEES. THE EVIDENCE IS PERSUASIVE THAT THIS DETERMINATION WAS MADE BY THE RESPONDENT AT APPROXIMATELY 10:30 A.M. ON NOVEMBER 7TH. THERE IS NO EVIDENCE TO ESTABLISH THAT AT THAT TIME THE RESPONDENT WAS AWARE OF ANY RECENT UNION ACTIVITY ON THE PART OF THE AGGRIEVED PERSONS. NO UNION ORGANIZATIONAL CAMPAIGN HAD BEEN CARRIED ON. THUS, AT THE TIME THE DECISION WAS TAKEN TO DISMISS THE AGGRIEVED PERSONS THERE EXISTED SUBSTANTIAL (WHETHER OR NOT REASONABLE) CAUSE FOR THAT ACTION AND THERE IS NO EVIDENCE TO SUPPORT THE FINDING OF AN IMPROPER MOTIVE FOR IT.

5. THE AGGRIEVED PERSONS RETURNED TO THE RESPONDENT'S PREMISES AT ABOUT 11:00 A.M. THEIR EVIDENCE IS THAT THEY WERE ASKED WHETHER THEY HAD JOINED THE UNION AND THAT WHEN THEY REPLIED THAT THEY HAD WERE TOLD THAT THEY HAD BEEN DISCHARGED IN ANY EVENT. THE EVIDENCE IS CONFLICTING ON THIS POINT BUT WE DO NOT FIND IT NECESSARY TO RESOLVE THIS CONFLICT, SINCE WE ARE UNABLE TO CONCLUDE, EVEN GIVING FULL WEIGHT TO THE EVIDENCE OF THE AGGRIEVED PERSONS, THAT THEIR DISMISSAL -- WHICH OCCURRED BEFORE THEIR RETURN TO THE RESPONDENT'S PREMISES -- WAS FOR THE REASON THAT THEY HAD JOINED THE UNION. ON THE EVIDENCE THE RESPONDENT DID NOT KNOW AT THAT TIME THAT THE AGGRIEVED PERSONS HAD JOINED THE UNION OR HAD INTENDED TO DO SO.

6. FOR THE FOREGOING REASONS THE COMPLAINT MUST BE DISMISSED.

13998-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V.
NORAK STEEL CONSTRUCTION LTD. (RESPONDENT).

- AND -

13939-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V.
NORAK STEEL CONSTRUCTION LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT HEARING: L. INGLE, O. URBANOVICS AND F. RAO FOR
THE COMPLAINANT, F.R. VON VEH AND F. OBER FOR THE RESPONDENT.

DECISION OF THE BOARD: JANUARY 31, 1968.

1. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS LIVIO CARDONE, VALERIO GRIECO AND FRANCISCO CARELLI WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

2. GRIECO WAS EMPLOYED BY THE RESPONDENT IN JULY OF 1967 AS A WELDER AND FITTER AND CARDONE AND CARELLI COMMENCED THEIR EMPLOYMENT WITH THE RESPONDENT AS WELDERS IN SEPTEMBER OF 1967. GRIECO JOINED THE COMPLAINANT UNION ON NOVEMBER 1ST, CARDONE JOINED ON OCTOBER 16TH AND CARELLI ON NOVEMBER 7TH. ALL OF THEM STATED IN THEIR EVIDENCE THAT THERE HAD BEEN NO COMPLAINTS ABOUT THEIR WORK DURING THE COURSE OF THEIR EMPLOYMENT. BOTH CARDONE AND GRIECO WERE DISCHARGED BY STEVEN LAMPI, THE PLANT SUPERINTENDENT, ON NOVEMBER 24TH. ACCORDING TO GRIECO, LAMPI TOLD HIM THAT THERE WAS NOT ENOUGH WORK. CARDONE TESTIFIED THAT LAMPI JUST TOLD HIM THAT HIS SERVICES WERE NOT REQUIRED. ALL THREE AGGRIEVED PERSONS TESTIFIED THAT EMPLOYEES WERE HIRED AS WELDERS AFTER THEM AND REMAINED IN THE EMPLOY OF THE RESPONDENT AFTER THEIR DISCHARGES.

3. WILLIE WEIDNER'S EVIDENCE IS THAT HE WAS HIRED BY THE RESPONDENT IN JUNE OF 1967 AS A QUALITY CONTROL INSPECTOR AND THAT HE WAS ALSO A MEMBER OF THE MANAGEMENT OF THE RESPONDENT. HE TESTIFIED THAT HE HIRED GRIECO BUT THAT HE HAD NOT LIVED UP TO EXPECTATIONS. MORE PARTICULARLY, HE WAS NOT PRODUCTIVE. ACCORDING TO BOTH WEIDNER AND LAMPI, GRIECO, CARDONE AND CARELLI WORKED ON THE SAME JIG. LAMPI'S EVIDENCE IS THAT PRODUCTION ON THEIR JIG WAS LOWER THAN THE OTHERS. GRIECO, ON THE OTHER HAND, TESTIFIED THAT THE JIG CREWS DID NOT REGULARLY WORK TOGETHER.

4. LAMPI WAS HIRED BY THE RESPONDENT AS PLANT SUPERINTENDENT ON NOVEMBER 20TH, 1967. FOR THE FOUR PRIOR YEARS HE HAD BEEN EMPLOYED BY YORK STEEL COMPANY LIMITED AS A LEAD HAND AND PLANNING ENGINEER. HIS EVIDENCE IS THAT WHEN HE CAME TO THE RESPONDENT'S PLANT IN LATE NOVEMBER PRODUCTION WAS LOW AND DISCIPLINE POOR. HE STATED THAT HE WAS GIVEN GENERAL AUTHORITY TO TAKE THE NECESSARY STEPS TO IMPROVE PRODUCTION INCLUDING DISCHARGING EMPLOYEES. HIS EVIDENCE IS THAT DURING THE FIRST FOUR DAYS OF HIS EMPLOYMENT HE HAD COMPLAINTS FROM THE LEAD HAND ABOUT GRIECO'S WORK AND IN PARTICULAR THAT HE ALWAYS TALKED TO THE OTHER EMPLOYEES AND HELD UP PRODUCTION. LAMPI TESTIFIED THAT ON NOVEMBER 22ND HE WARNED ALL THREE OF THE AGGRIEVED PERSONS THAT THEIR WORK WOULD HAVE TO IMPROVE OR HE WOULD HAVE TO LET THEM GO. LAMPI'S TESTIMONY IS THAT CARELLI REFUSED TO KEEP HIS SAFETY HELMET ON AND THAT HE HAD SPOKE TO HIM ABOUT IT ON A NUMBER OF OCCASIONS, ONCE WITH JOSEPH CESCOLINI, ACTING AS AN INTERPRETER. CESCOLINI, WHO IS A FITTER IN THE EMPLOY OF THE RESPONDENT, TESTIFIED THAT HE ACTED AS AN INTERPRETER FOR FRANK OBER, THE PRESIDENT OF THE RESPONDENT COMPANY, WHEN HE TOLD CARELLI TO KEEP HIS SAFETY HELMET ON AND TO KEEP WORKING.

5. ACCORDING TO THE EVIDENCE, THE COMPLAINANT FILED AN APPLICATION FOR CERTIFICATION WITH THE BOARD ON NOVEMBER 16TH. LAMPI TESTIFIED THAT IN THE FOUR DAYS THAT HE HAD BEEN WITH THE RESPONDENT INCLUDING NOVEMBER 24TH, WHEN HE DISCHARGED GRIECO AND CARDONE, HE HAD NO KNOWLEDGE OF THE UNION'S ORGANIZING CAMPAIGN OR

OF ITS APPLICATION FOR CERTIFICATION. HIS EVIDENCE IS THAT HE DISCHARGED GRIECO AND CARDONE OF HIS OWN INITIATIVE BECAUSE THEY WERE POOR WELDERS AND WORKERS. HIS TESTIMONY IS THAT HE DID NOT DISCHARGE CARELLI AT THE SAME TIME BECAUSE HE WAS A BETTER WELDER AND HE (LAMPI) HAD NO REPLACEMENT FOR HIM.

6. GRIECO TESTIFIED THAT ON NOVEMBER 21ST HE WAS EATING IN THE LUNCH ROOM WITH A NUMBER OF OTHER EMPLOYEES AND THEY WERE TALKING ABOUT THE UNION. ACCORDING TO GRIECO, OBER STOPPED BESIDE THE TABLE AND TOLD GRIECO HE TALKED TOO MUCH. GRIECO ASKED OBER IF HE NEVER TALKED, TO WHICH OBER REPLIED "ONLY ABOUT BUSINESS". GRIECO'S EVIDENCE IS THAT HE RETORTED "YOU TALK ABOUT YOUR BUSINESS AND I WILL TALK ABOUT MINE". APPARENTLY, SOME DISCUSSION ENSUED COMPARING WORKING CONDITIONS IN GERMANY AND CANADA AND ACCORDING TO GRIECO, OBER ASKED HIM WHY HE DID NOT GO BACK TO GERMANY.

7. CARDONE'S EVIDENCE IS THAT ON NOVEMBER 20TH, WHILE HE WAS DRIVING HIS FOREMAN ROLANDO SALICCIA HOME, SALICCIA ASKED HIM IF HE HAD JOINED THE UNION TO WHICH CARDONE REPLIED IN THE NEGATIVE. ACCORDING TO CARDONE, SALICCIA STATED THAT ALL EMPLOYEES WHO JOINED THE UNION WOULD BE "THROWN OUT" BY THE COMPANY. HE FURTHER TESTIFIED THAT SALICCIA HAD MADE SIMILAR STATEMENTS AROUND THE PLANT.

8. THE EVIDENCE OF CARELLI IS THAT HE WAS VICE-PRESIDENT OF THE UNION AND A MEMBER OF THE COMPLAINANT UNION'S NEGOTIATING COMMITTEE, ALTHOUGH HE DID NOT PARTICIPATE IN ANY ACTUAL NEGOTIATIONS WITH THE RESPONDENT. ACCORDING TO CARELLI, ON DECEMBER 14TH, SALICCIA TOLD HIM THAT EMPLOYEES WHO HAD JOINED THE UNION WOULD BE "THROWN OUT" AND THAT THE COMPANY WOULD NEVER SIGN A COLLECTIVE AGREEMENT. (THE COMPLAINANT WAS CERTIFIED ON DECEMBER 1ST, 1967). CARELLI'S TESTIMONY IS THAT SALICCIA TOLD HIM THAT HE (SALICCIA) KNEW THAT CARELLI WAS A MEMBER OF THE UNION. CARELLI'S EVIDENCE IS THAT HE REPLIED THAT THE COMPANY WOULD HAVE TO "THROW OUT" THE MAJORITY OF THE EMPLOYEES AS THEY HAD JOINED THE UNION.

9. CARELLI FURTHER TESTIFIED THAT HE WAS APPROACHED BY FRANK OBER ON DECEMBER 15TH WHO SHOWED HIM A LETTER FROM THE UNION WHICH NAMED CARELLI AS ONE OF THE MEMBERS OF THE BARGAINING COMMITTEE. ACCORDING TO CARELLI, OBER ASKED HIM WHY HE HAD STOOD FOR THE POSITION OF VICE-PRESIDENT OF THE UNION AND ASKED CARELLI WHAT IT WAS THAT HE WANTED. ACCORDING TO CARELLI HE TOLD OBER THAT THE OTHER EMPLOYEES WANTED HIM TO BE THE VICE-PRESIDENT, AND THAT THE OTHER EMPLOYEES WERE AFRAID THAT IF OBER LEARNED THAT THEY HAD JOINED THE UNION THEY WOULD BE DISCHARGED. CARELLI'S TESTIMONY IS THAT OBER TOLD HIM TO DO HIS WORK AND THAT IF HE SAW HIM SPEAKING TO ANYONE HE WOULD BE DISCHARGED. ON DECEMBER 18TH HE FOUND THAT HIS "PUNCH" CARD HAD BEEN REMOVED. THE EXACT SEQUENCE OF EVENTS SURROUNDING HIS DEPARTURE FROM THE PLANT ON THAT DATE IS NOT CLEAR FROM THE EVIDENCE. IN ANY EVENT, CARELLI WAS DISCHARGED ON DECEMBER 18TH.

10. THERE IS A CONFLICT BETWEEN THE EVIDENCE OF THE THREE AGGRIEVED PERSONS ON THE ONE HAND AND WEIDNER AND LAMPI ON THE OTHER CONCERNING THE WORK OF THE AGGRIEVED PERSONS. THE FORMER CLAIMED THAT THERE HAD BEEN NO COMPLAINTS ABOUT THEIR WORK AND THE LATTER ASSERTING THAT THEY WERE POOR WORKERS AND HAD BEEN ISSUED WARNINGS. THERE IS ALSO GRIECO'S EVIDENCE THAT LAMPI TOLD HIM THAT HE WAS BEING DISCHARGED BECAUSE THERE WAS NOT ENOUGH WORK AND LAMPI'S OWN TESTIMONY THAT HE DISCHARGED GRIECO AND CARDONE ON NOVEMBER 24TH BECAUSE OF THE QUALITY OF THEIR WORK AND THEIR LOW PRODUCTION. LAMPI FURTHER TESTIFIED THAT AT THE TIME THAT HE DISCHARGED THEM HE WAS TOTALLY UNAWARE OF THE UNION'S ORGANIZING CAMPAIGN. HAVING REGARD TO ALL THE EVIDENCE RELATING TO GRIECO AND CARDONE, INCLUDING GRIECO'S CONVERSATION WITH OBER IN THE LUNCH ROOM ON NOVEMBER 21ST AND CARDONE'S CONVERSATION WITH SALICCIA IN CARDONE'S CAR ON NOVEMBER 20TH, THE COMPLAINANT HAS FAILED TO SATISFY US THAT GRIECO AND CARDONE WERE DISCHARGED BECAUSE OF THEIR UNION ACTIVITY IN CONTRAVENTION OF SECTION 50(A) OF THE ACT. THE COMPLAINT AS IT RELATES TO GRIECO AND CARDONE ACCORDINGLY IS DISMISSED.

11. THE EVIDENCE RELATING TO CARELLI, HOWEVER, IS QUITE DIFFERENT. HE WAS VICE-PRESIDENT OF THE UNION AND A MEMBER OF THE NEGOTIATING COMMITTEE AND THIS WAS KNOWN TO OBER AND LAMPI. WHILE CARELLI'S EVIDENCE RELATING TO THE NUMBER OF HOURS HE WORKED WAS EXAGGERATED WHEN COMPARED TO HIS TIME CARDS, HIS EVIDENCE RELATING TO HIS CONVERSATIONS WITH SALICCIA AND OBER ON DECEMBER 14TH AND 15TH WERE IN NO WAY REFUTED BY THE RESPONDENT. NEITHER SALICCIA OR OBER WERE CALLED TO GIVE EVIDENCE. IF, IN FACT, CARELLI'S WORK PERFORMANCE WAS UNSATISFACTORY, ONE WOULD HAVE EXPECTED LAMPI TO DISCHARGE HIM WITH GRIECO AND CARDONE ON NOVEMBER 24TH. LAMPI'S EXPLANATION FOR KEEPING HIM ON WAS THAT HE WAS A BETTER WELDER THAN GRIECO AND CARDONE AND THAT HE (LAMPI) HAD NO REPLACEMENT FOR CARELLI AT THE TIME HE DISCHARGED GRIECO AND CARDONE. THIS EXPLANATION IS NOT CONSISTENT WITH THE UNCHALLENGED EVIDENCE OF GRIECO THAT LAMPI TOLD HIM THAT THERE WAS NOT SUFFICIENT WORK. ON ALL THE EVIDENCE, THE BOARD IS SATISFIED THAT THE RESPONDENT WAS PRIMARILY MOTIVATED TO DISCHARGE CARELLI ON DECEMBER 18TH, 1967, BECAUSE OF HIS ACTIVE ROLE ON BEHALF OF THE COMPLAINANT UNION IN CONTRAVENTION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

12. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

- (1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY FRANCISCO CARELLI TO THE SAME OR LIKE EMPLOYMENT, THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD, AND RECEIVED, PRIOR TO AND UP TO THE TIME OF HIS DISCHARGE ON DECEMBER 18TH, 1967.

- (2) AS COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM DECEMBER 18TH, 1967 TO AND INCLUDING JANUARY 24TH, 1968, THE RESPONDENT SHALL FORTHWITH PAY TO FRANCISCO CARELLI THE SUM OF \$540.00.
- (3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY FRANCISCO CARELLI BETWEEN THE DATE OF THE HEARING ON JANUARY 24TH, 1968 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

13599(A)-67-JD: REDFERN CONSTRUCTION COMPANY LIMITED (COMPLAINANT) V. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL UNION 793 AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JANUARY 11, 1968.

1. BY A DECISION OF THE BOARD DATED SEPTEMBER 7TH, 1967 THE BOARD MADE THE FOLLOWING INTERIM ORDER WITH REGARD TO THE COMPLAINT MADE BY THE COMPLAINANT IN THIS MATTER:

THE COMPLAINANT COMPANY SHALL CONTINUE TO ASSIGN TO A MEMBER OF THE RESPONDENT LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, THE WORK OF OPERATING AN ELECTRICALLY POWERED HYDRAULICALLY RUN EXCAVATING BOOM MOUNTED ON A FLAT CAR BEING USED IN THE EXCAVATION OF AN UNDERGROUND TUNNEL FOR THE GARRISON CREEK STORM SEWER UNDER CONSTRUCTION BY THE COMPLAINANT PURSUANT TO A CONTRACT WITH THE PUBLIC WORKS DEPARTMENT OF METROPOLITAN TORONTO AT A LOCATION EXTENDING NORTH AND SOUTH FROM THE INTERSECTION OF PORTLAND AND ADELAIDE STREETS IN THE CITY OF TORONTO.

THIS ORDER SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

2. PURSUANT TO SECTION 66(4) OF THE LABOUR RELATIONS ACT, THE BOARD ON SEPTEMBER 7TH, 1967 FILED IN THE OFFICE OF THE REGISTRAR OF THE SUPREME COURT A COPY OF THE ABOVE INTERIM ORDER.

3. BY LETTER DATED JANUARY 9TH, 1968, THE SOLICITORS FOR THE COMPLAINANT REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS COMPLAINT. FOR THE BOARD TO GRANT THE COMPLAINANT'S REQUEST AT THIS STAGE IN THE PROCEEDINGS OBVIOUSLY WOULD PRECLUDE ANY DETERMINATION BY THE BOARD ON THE MERITS OF THE COMPLAINT. IN THESE CIRCUMSTANCES, THE BOARD IS OF THE OPINION THAT ITS CONSENT TO THE COMPLAINANT'S REQUEST NECESSARILY MUST BE CONDITIONAL UPON A REVOCATION BY THE BOARD OF ITS INTERIM ORDER IN THIS MATTER.

4. THE BOARD HEREBY REVOKES ITS INTERIM ORDER DATED SEPTEMBER 7TH, 1967.

5. THE COMPLAINT IS WITHDRAWN BY LEAVE OF THE BOARD.

13952(A)-67-JD: BENNETT & WRIGHT LIMITED (COMPLAINANT) V. THE UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA (RESPONDENT #1) AND THE UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA, LOCAL 67 (RESPONDENT #2) AND R. WATSON, OF THE MUNICIPALITY OF RICHMOND HILL, IN THE PROVINCE OF ONTARIO, GENERAL ORGANIZER FOR THE UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA (RESPONDENT #3) AND T. BYRNE, OF THE CITY OF HAMILTON IN THE PROVINCE OF ONTARIO, BUSINESS MANAGER OF LOCAL 67 OF THE UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA (RESPONDENT #4) AND P. DERY, OF THE MUNICIPALITY OF STONEY CREEK IN THE PROVINCE OF ONTARIO, UNION STEWARD OF LOCAL 67 OF THE UNITED ASSOCIATION OF JOURNEYMEN & APPRENTICES OF THE PLUMBING & PIPEFITTING INDUSTRY OF THE UNITED STATES & CANADA REPRESENTING EMPLOYEES OF A.E. ANDERSON CONSTRUCTION COMPANY LIMITED (RESPONDENT #5) AND INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL-CIO-CLC (RESPONDENT #6) AND A.E. ANDERSON CONSTRUCTION COMPANY LIMITED (RESPONDENT #7) AND DOMINION FOUNDRIES AND STEEL LIMITED (RESPONDENT #8) AND INTERNATIONAL ASSOCIATION OF MACHINISTS (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: S. R. ELLIS AND B. P. BELLMORE FOR THE COMPLAINANT, S. SIMPSON AND R. WATSON FOR RESPONDENTS #1, #2, #3, #4 AND #5, J. SACK AND E. C. WITTHAMES FOR RESPONDENT #6, E. L. STRINGER AND J. EBY FOR RESPONDENT #7, NO ONE FOR RESPONDENT #8, J. V. GOODISON FOR THE INTERVENER.

DECISION OF THE BOARD: JANUARY 10, 1968.

1. THE BOARD DIRECTS THAT THE INTERNATIONAL ASSOCIATION OF MACHINISTS BE ADDED AS A PARTY TO THIS PROCEEDING.

2. THE COMPLAINANT IS APPLYING TO THE BOARD UNDER SECTION 66 OF THE ACT FOR A DIRECTION WITH RESPECT TO A WORK ASSIGNMENT WHICH IS DEALT WITH BELOW.

3. AT THE OUTSET OF THE HEARING, COUNSEL FOR RESPONDENTS #1, #2, #3, #4, AND #5 CHALLENGED THE JURISDICTION OF THE BOARD TO MAKE ANY DIRECTION IN THIS MATTER.

4. FOR PURPOSES OF ARGUMENT ONLY ON THE ISSUE OF THE BOARD'S JURISDICTION, THE PARTIES AGREED TO THE FACTS SET OUT IN THIS PARAGRAPH AND IN PARAGRAPHS 5, 6 AND 7. THE COMPLAINANT OWNS AND OPERATES A PLANT AT 45 CRANFIELD ROAD IN METROPOLITAN TORONTO IN WHICH, AMONG OTHER THINGS, IT FABRICATES PREFABRICATED WELDED PIPE SECTIONS. THESE SECTIONS WHICH ARE COMMONLY PIPE HEADERS OR MANIFOLDS ARE ORDERED BY CUSTOMERS WHO ARE MOST OFTEN INDUSTRIAL FIRMS. THEY ARE GENERALLY INSTALLED BY PIPEFITTERS OR PLUMBERS EMPLOYED EITHER BY THE CUSTOMER OR BY A CONTRACTOR HIRED BY THE CUSTOMER. THE COMPLAINANT HAS BEEN DOING THIS TYPE OF WORK AS PART OF ITS BUSINESS FOR ABOUT TWELVE YEARS. IT EMPLOYS APPROXIMATELY FIFTY BARGAINING UNIT EMPLOYEES IN ITS PLANT OF WHOM ABOUT FIVE ARE REGULARLY EMPLOYED IN THE FABRICATION OF PREFABRICATED WELDED PIPE SECTIONS.

5. ON NOVEMBER 18TH, 1965, THIS BOARD CERTIFIED THE INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION, AFL-CIO-CLC (HEREINAFTER REFERRED TO AS THE "MOLDERS UNION") AS BARGAINING AGENT FOR ALL OF THE COMPLAINANT'S EMPLOYEES IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. PRIOR TO THE BOARD'S CERTIFICATION NONE OF THE COMPLAINANT'S EMPLOYEES HAD BEEN REPRESENTED BY A TRADE UNION. SUBSEQUENT TO CERTIFICATION THE COMPLAINANT AND THE MOLDERS UNION ENTERED INTO A COLLECTIVE AGREEMENT OF ONE YEAR'S DURATION. THE SAME PARTIES ENTERED INTO A SECOND COLLECTIVE AGREEMENT EFFECTIVE FROM MARCH 7TH, 1967 TO MARCH 6TH, 1970. THE SCOPE CLAUSE OF THIS AGREEMENT CONFORMS WITH THE BARGAINING UNIT DESCRIBED IN THE BOARD'S CERTIFICATE EXCEPT THAT STUDENTS EMPLOYED DURING VACATION PERIODS OR ON A PART-TIME BASIS ALSO ARE EXCLUDED FROM THE BARGAINING UNIT. THE COMPLAINANT HAS NO COLLECTIVE AGREEMENT WITH THE UNITED ASSOCIATION OR ANY OF ITS LOCALS NOR DOES IT HAVE ANY MEMBERS OF THE UNITED ASSOCIATION OR ITS LOCALS IN ITS EMPLOY.

6. ON OCTOBER 12TH, 1967, DOMINION FOUNDRIES AND STEEL LIMITED (HEREINAFTER REFERRED TO AS "DOFASCO") ORDERED FROM THE COMPLAINANT SIX PREFABRICATED WELDED PIPE HEADERS. THE PIPE HEADERS WERE FABRICATED IN THE COMPLAINANT'S PLANT IN METROPOLITAN TORONTO BY EMPLOYEES OF THE COMPLAINANT WHO ARE MEMBERS OF THE MOLDERS UNION. THEY WERE DELIVERED TO DOFASCO'S NO. 2 BLAST FURNACE ON NOVEMBER 7TH, 1967. DOFASCO CONTRACTED THE INSTALLATION OF THE PIPE HEADERS TO A.E. ANDERSON CONSTRUCTION COMPANY LIMITED (HEREINAFTER REFERRED TO AS "A.E. ANDERSON"). A.E. ANDERSON IS A PARTY TO A CURRENT COLLECTIVE AGREEMENT

BETWEEN THE NATIONAL OPERATING CONSTRUCTION CONTRACTORS AND THE UNITED ASSOCIATION WHICH IS KNOWN AS THE CANADIAN NATIONAL CONSTRUCTION AGREEMENT. IT APPEARS THAT LOCAL 67 ADMINISTERS THIS COLLECTIVE AGREEMENT WITH A.E. ANDERSON AND THAT THE EMPLOYEES OF A.E. ANDERSON WHOSE JOB IT IS TO INSTALL PIPE HEADERS ARE MEMBERS OF LOCAL 67 OF THE UNITED ASSOCIATION. ON NOVEMBER 7TH, THE SAME DAY THAT THE PIPE HEADERS WERE DELIVERED TO DOFASCO, P. DERY, A UNION STEWARD FOR LOCAL 67, INFORMED A.E. ANDERSON THAT THE MEMBERS OF LOCAL 67 IN ITS EMPLOY WOULD NOT INSTALL THE PIPE HEADERS BECAUSE THEY DID NOT HAVE UNION LABELS ON THEM. ARRANGEMENTS WERE MADE BY A.E. ANDERSON FOR DELIVERY OF THE LABELS ON NOVEMBER 8TH, 1967. THE LABELS STATED THAT THE PIPE HEADERS WERE FABRICATED BY MEMBERS OF THE MOLDERS UNION. ON NOVEMBER 13TH, 1967, DERY ADVISED A.E. ANDERSON THAT HE HAD BEEN INSTRUCTED BY T. BYRNE, THE BUSINESS MANAGER OF LOCAL 67, WITH THE APPROVAL OF R. WATSON, GENERAL ORGANIZER FOR THE UNITED ASSOCIATION, NOT TO PERMIT MEMBERS OF LOCAL 67 TO WORK ON THE INSTALLATION OF THE PIPE HEADERS PREFABRICATED BY THE COMPLAINANT FOR DOFASCO ON THE GROUNDS THAT THEY HAD NOT BEEN FABRICATED BY MEMBERS OF THE UNITED ASSOCIATION.

7. A.E. ANDERSON NOTIFIED THE COMPLAINANT OF THE POSITION ADOPTED BY LOCAL 67. ON NOVEMBER 15TH, 1967, THE COMPLAINANT SENT A TELEGRAM TO R. WATSON INQUIRING WHETHER THE INFORMATION CONVEYED TO IT BY A.E. ANDERSON WAS CORRECT. WATSON ON THE SAME DAY VERBALLY CONFIRMED TO S.H. STREBEL, THE GENERAL MANAGER OF THE COMPLAINANT, THAT NO PREFABRICATED WELDED PIPE, FABRICATED IN THE COMPLAINANT'S PLANT IN METROPOLITAN TORONTO WOULD BE INSTALLED BY MEMBERS OF THE UNITED ASSOCIATION. ON NOVEMBER 29TH, 1967, THE COMPLAINANT WAS ADVISED BY A.E. ANDERSON THAT DESPITE EFFORTS TO PERSUADE LOCAL 67 TO CHANGE ITS MIND AND AN APPEAL TO OFFICIALS OF THE UNITED ASSOCIATION IN WASHINGTON D.C., THE DECISION OF THE UNITED ASSOCIATION NOT TO INSTALL THE PIPE HEADERS REMAINED UNALTERED. ON DECEMBER 1ST, 1967, THE COMPLAINANT FILED THE INSTANT COMPLAINT.

8. THE COMPLAINANT IS REQUESTING THAT THE BOARD DIRECT THAT IT CONTINUE TO ASSIGN THE WORK INVOLVED IN THE SHOP FABRICATION OF ANY PREFABRICATED WELDED PIPE SECTIONS FABRICATED BY THE COMPLAINANT AT ITS PLANT IN METROPOLITAN TORONTO TO ITS EMPLOYEES NORMALLY ENGAGED IN SUCH WORK NOTWITHSTANDING THAT THE BARGAINING AGENT FOR SUCH EMPLOYEES MAY NOT BE THE UNITED ASSOCIATION OR ANY LOCAL THEREOF. THE COMPLAINANT FURTHER REQUESTS THAT THE BOARD DIRECT THE UNITED ASSOCIATION, LOCAL 67 OR ANY OFFICER, OFFICIAL, AGENT OR MEMBER OF THE INTERNATIONAL OR THE LOCAL HAVING NOTICE OR KNOWLEDGE OF THE ABOVE DIRECTION TO REFRAIN FROM ORDERING, ADVISING, AIDING, COUNTENANCING OR PARTICIPATING IN ANY REFUSAL BY ANY MEMBERS OF THE UNITED ASSOCIATION OR ANY OF ITS LOCALS TO WORK ON THE INSTALLATION OF ANY PREFABRICATED WELDED PIPE SECTIONS FABRICATED BY THE COMPLAINANT AT ITS PLANT IN METROPOLITAN TORONTO OR FROM OTHERWISE OBSTRUCTING OR IMPEDING, IN ANY MANNER, EITHER DIRECTLY OR INDIRECTLY, THE INSTALLATION OF SUCH WELDED PIPE SECTIONS.

9. AS AN ALTERNATIVE, THE COMPLAINANT IS ASKING THAT THE BOARD DIRECT THAT IT ASSIGN THE FABRICATION WORK INVOLVED IN THE PRODUCTION OF SUCH PREFABRICATED WELDED PIPE SECTIONS TO EMPLOYEES WHO ARE MEMBERS OF THE UNITED ASSOCIATION OR ONE OF ITS LOCALS. AS A PREREQUISITE TO MAKING THE ABOVE DIRECTION, HOWEVER, THE COMPLAINANT REQUESTS THAT THE BOARD ISSUE A DIRECTION ALTERING THE BOARD'S CERTIFICATE OF NOVEMBER 18TH, 1965 TO EXCLUDE FROM THE BARGAINING UNIT ALL EMPLOYEES OF THE COMPLAINANT AT ITS PLANT IN METROPOLITAN TORONTO EMPLOYED IN THE FABRICATING OF WELDED PIPE SECTIONS. THE COMPLAINANT REQUESTS THAT THE SAME ALTERATION BE MADE TO THE BARGAINING UNIT SET OUT IN THE CURRENT COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE COMPLAINANT AND THE MOLDERS UNION. SHOULD THE BOARD GRANT THE ABOVE REMEDY, THE COMPLAINANT ALSO WANTS AN IDENTICAL DIRECTION TO THAT CONTAINED IN PARAGRAPH 9, NAMELY THAT THE UNITED ASSOCIATION REFRAIN FROM ANY INTERFERENCE IN THE INSTALLATION OF SUCH WELDED PIPE SECTIONS.

10. COUNSEL FOR THE UNITED ASSOCIATION AND LOCAL 67 AND THE OFFICERS AND OFFICIALS THEREOF MADE THE FOLLOWING SUBMISSIONS. THE LANGUAGE OF SUBSECTION 1 OF SECTION 66 CONFINES THE BOARD TO INQUIRIES INTO COMPLAINTS THAT A TRADE UNION IS REQUIRING AN EMPLOYER TO ASSIGN WORK, OR AN EMPLOYER IS ASSIGNING WORK, TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN EMPLOYEES IN ANOTHER TRADE UNION. THE WORDING OF THE SUBSECTION CAN ONLY MEAN THAT AN EMPLOYER MUST HAVE IN HIS EMPLOY EMPLOYEES WHO ARE MEMBERS OF THE TRADE UNION TO WHOM A COMPLAINANT IS SEEKING TO HAVE THE WORK IN DISPUTE ASSIGNED. SUBSECTIONS (8) AND (9) OF SECTION 66 LEND SUPPORT TO THIS INTERPRETATION OF SUBSECTION (1) AS THE FORMER TWO SUBSECTIONS CONTEMPLATE THAT THE EMPLOYER CONCERNED HAS COLLECTIVE AGREEMENTS WITH THE TRADE UNIONS INVOLVED IN ANY WORK ASSIGNMENT DISPUTE. JUDICIAL SUPPORT FOR THE ABOVE INTERPRETATION OF SECTION 66(1) IS FOUND ALSO IN THE DECISION OF McRUER C.J.H.C. IN CANADIAN PITTSBURGH INDUSTRIES LIMITED V. H. ORLIFFE ET AL [1961] O.W.N. 223; C.L.L.C. VOL. 2 1960-1964, ¶15,373. (THIS DECISION WILL BE REFERRED TO AGAIN LATER). FURTHER, SUBSECTION (9), (10) AND (12) OF SECTION 66 PERMIT THE BOARD TO ALTER BARGAINING UNITS BUT THEY DO NOT PERMIT THE BOARD TO CREATE NEW COLLECTIVE BARGAINING RELATIONSHIPS.

11. COUNSEL RELATED HIS SUBMISSIONS WITH REGARD TO THE JURISDICTION OF THE BOARD TO THE ASSUMED FACTS OF THE INSTANT COMPLAINT IN THE FOLLOWING TERMS. THE COMPLAINANT HAS A COLLECTIVE AGREEMENT WITH THE MOLDERS UNION BUT HAS NO COLLECTIVE BARGAINING RELATIONSHIP WITH THE UNITED ASSOCIATION OF LOCAL 67 AND HAS NO MEMBERS OF THE UNITED ASSOCIATION OR LOCAL 67 IN ITS EMPLOY. THE UNITED ASSOCIATION OR LOCAL 67 NECESSARILY WOULD BE STRANGERS TO ANY ACTION TAKEN BY THE COMPLAINANT. THE BOARD THEREFORE, PURSUANT TO THE PROVISIONS OF SECTION 66, WOULD BE WITHOUT JURISDICTION TO MAKE ANY DIRECTION HAD THE UNITED ASSOCIATION OR LOCAL 67 MADE A COMPLAINT UNDER SECTION 66 CONCERNING THE WORK ASSIGNMENT MADE BY THE COMPLAINANT. IN ANY EVENT, NEITHER THE UNITED ASSOCIATION OR LOCAL 67, PER SE, HAS ANY QUARREL WITH THE COMPLAINANT'S ASSIGNMENT OF THE WORK OF FABRICATING PREFABRICATED WELDING PIPE SECTIONS TO MEMBERS OF THE MOLDERS UNION. A.E. ANDERSON, ON THE OTHER

HAND, IS BOUND BY A COLLECTIVE AGREEMENT WITH THE UNITED ASSOCIATION AND HAS NO COLLECTIVE BARGAINING RELATIONSHIP WITH THE MOLDERS UNION. MOREOVER, DOFASCO, HAVING SIGNED SEPARATE CONTRACTS WITH THE COMPLAINANT AND A.E. ANDERSON, THERE IS NO CONTRACTUAL RELATIONSHIP BETWEEN THE TWO COMPANIES. THE COMPLAINANT ACCORDINGLY IS A TOTAL STRANGER TO ANY ACTIONS TAKEN BY THE UNITED ASSOCIATION OR LOCAL 67 IN ITS RELATIONSHIP WITH A.E. ANDERSON. IN THESE CIRCUMSTANCES, THE BOARD UNDER SECTION 66 AGAIN IS WITHOUT JURISDICTION TO MAKE ANY OF THE DIRECTIONS REQUESTED BY THE COMPLAINANT IN THE INSTANT COMPLAINT. MOREOVER, FOR THE BOARD TO ACCEPT JURISDICTION AND ACCEDE TO THE REQUEST OF THE COMPLAINANT WOULD BE TO PERMIT A STRANGER TO PERPETRATE A BREACH OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE UNITED ASSOCIATION AND A.E. ANDERSON. APPLIED ON A WIDER SCALE, FOR THE BOARD TO ACCEPT JURISDICTION AND MAKE THE DIRECTIONS SOUGHT BY THE COMPLAINANT IN THIS CASE WOULD OPEN THE DOOR TO ANY STRANGER BEING ABLE TO DISRUPT EXISTING COLLECTIVE BARGAINING RELATIONSHIPS. THIS WOULD INEVITABLY UNDERMINE THE WHOLE FIELD OF COLLECTIVE BARGAINING. COUNSEL, ACCORDINGLY, SUBMITS THAT THE BOARD MUST DECLINE JURISDICTION IN THE INSTANT COMPLAINT.

12. IN A RECENT DECISION IN THE FOLEY CONSTRUCTION LIMITED CASE (BOARD FILE NO. 13928(A)-67-JD) THE BOARD, FOLLOWING THE REASONING IN TWO DECISIONS OF THE ONTARIO HIGH COURT, DECLINED TO ACCEPT JURISDICTION IN A COMPLAINT MADE UNDER SECTION 66(1) OF THE ACT. IN THE PITTSBURGH INDUSTRIES LIMITED V. H. ORLIFFE ET AL CASE (SUPRA) MCRUER C.J.H.C. HELD THAT SECTION 66 OF THE ACT CONTEMPLATES ONLY THOSE DISPUTES THAT ARISE WITH RESPECT TO THE ASSIGNMENT OF WORK BY AN EMPLOYER AMONG THOSE EMPLOYEES WHO ARE ENGAGED ON THE WORK OVER WHICH HE HAS DIRECTION. HE WENT ON TO EXPRESS THE OPINION THAT THE SECTION HAD NO APPLICATION WHERE A TRADE UNION THAT HAS NO MEMBERS EMPLOYED UNDER THE DIRECTION OF THE EMPLOYER MAKES THE COMPLAINT THAT THE WORK IN DISPUTE SHOULD BE ASSIGNED TO ITS MEMBERS. GRANT J. IN HIS DECISION IN THE WOOD, WIRE AND METAL LATHERS, INTERNATIONAL UNION, LOCAL 97 V. ORLIFFE ET AL [1963] 2 O.R. 698; C.L.L.C. VOL. 2 1960-1964, ¶15495, WHILE FOLLOWING THE EARLIER DECISION GAVE AN EXPANDED INTERPRETATION TO SECTION 66. HE HELD THAT SECTION 66 CAN BE UTILIZED BY A TRADE UNION THAT HAS MEMBERS IN THE EMPLOY OF THE EMPLOYER, EVEN THOUGH SUCH MEMBERS ARE NOT EMPLOYED ON THE JOB SITE WHERE THE WORK ASSIGNMENT DISPUTE ARISES.

13. COUNSEL FOR THE COMPLAINANT SUBMITS THAT THE ABOVE DECISION OF THE HIGH COURT CAN BE DISTINGUISHED ON THE BASIS OF THE ASSUMED FACTS AND THE REMEDY SOUGHT BY THE COMPLAINANT IN THE INSTANT CASE. COUNSEL NOTED THAT THE REASON ADVANCED BY MCRUER C.J.H.C. IN THE PITTSBURGH INDUSTRIES LIMITED CASE FOR HIS INTERPRETATION OF SECTION 66 WAS THAT TO INTERPRET THE SECTION OTHERWISE WOULD MEAN THAT THE JURISDICTIONAL DISPUTES COMMISSION (NOW THE BOARD) COULD COMPEL AN EMPLOYER TO ENGAGE WORKERS TO DO WORK THAT HIS EMPLOYEES WERE WILLING TO DO. COUNSEL POINTED OUT THAT THE REMEDY WHICH THE COMPLAINANT HERE IS SEEKING, HOWEVER, IS NOT OF THE TYPE ANTICIPATED BY THE CHIEF JUSTICE OF THE HIGH COURT. THE NATURE OF THE RELIEF WHICH THE COMPLAINANT WANTS DOES NOT INVOLVE ANY REQUIREMENT THAT AN EMPLOYER HIRE NEW EMPLOYEES WHO ARE MEMBERS OF ANOTHER TRADE UNION. RATHER THE COMPLAINANT IS ONLY ASKING THE BOARD TO MAKE A DIRECTION THAT THE

UNITED ASSOCIATION BE REQUIRED TO INSTALL THE PREFABRICATED PIPE HEADERS FABRICATED BY THE COMPLAINANT. COUNSEL URGED THE BOARD TO MAKE THE ABOVE DISTINCTION BETWEEN THE DECISIONS OF THE HIGH COURT AND TO TAKE JURISDICTION TO DEAL WITH THE INSTANT COMPLAINT.

14. COUNSEL FOR THE COMPLAINANT SUBMITS THAT SHOULD THE BOARD DECLINE TO ACCEPT JURISDICTION IT WOULD HAVE THE EFFECT OF PERMITTING THE UNITED ASSOCIATION TO BENEFIT FROM A SITUATION OF ITS OWN MAKING WHICH WOULD DEFEAT THE WHOLE PURPOSE OF THE BOARD'S CERTIFICATION OF THE MOLDERS UNION AS BARGAINING AGENT FOR THE EMPLOYEES OF THE COMPLAINANT. OVER-ALL, THE EFFECT WOULD BE TO ALLOW CONSTRUCTION CRAFT TRADE UNIONS SUCH AS THE UNITED ASSOCIATION TO CREATE WITH IMPUNITY CIRCUMSTANCES WHICH WOULD READILY LEAD TO THE FRACTIONALIZING OR DESTRUCTION OF EXISTING INDUSTRIAL BARGAINING UNITS. THIS IN TURN COULD ONLY HAVE SERIOUS AND DISRUPTIVE CONSEQUENCES FOR PRESENT INDUSTRIAL PATTERNS OF COLLECTIVE BARGAINING. COUNSEL ARGUED THAT A FAILURE TO ACCEPT JURISDICTION IN THE CIRCUMSTANCES OF THE INSTANT CASE WOULD LEAVE THE COMPLAINANT IN AN IMPOSSIBLE POSITION TO CARRY ON ITS OPERATIONS.

15. COUNSEL FOR THE MOLDERS UNION ASSOCIATED HIMSELF WITH THE SUBMISSIONS OF COUNSEL FOR THE COMPLAINANT. COUNSEL FOR THE MOLDERS UNION, HOWEVER, FURTHER ARGUED THAT IT WOULD BE AN ABSURD SITUATION IF THE UNITED ASSOCIATION WERE IN A BETTER POSITION THAN THE COMPLAINANT BY REASON OF THE FACT THAT IT HAD NO REPRESENTATION AMONG THE EMPLOYEES OF THE COMPLAINANT. MOREOVER, COUNSEL ARGUED THAT TO PERMIT THE UNITED ASSOCIATION AND LOCAL 67 TO MAINTAIN ITS PRESENT POSITION WITH REGARD TO THE INSTALLATION OF THE PIPE HEADERS WOULD HAVE THE EFFECT OF GRANTING TO THE PLUMBERS THE RIGHT TO REPRESENT EMPLOYEES WITHOUT HAVING TO SECURE CERTIFICATION.

16. THE INTERNATIONAL ASSOCIATION OF MACHINISTS WAS SERVED WITH A NOTICE OF THE HEARING AS A TRADE UNION WHICH ONE OF THE RESPONDENTS INDICATED HAD AN INTEREST IN ANY DETERMINATION MADE BY THE BOARD IN THIS MATTER. THE MACHINISTS' REPRESENTATIVE AT THE HEARING ADOPTED THE SUBMISSIONS OF COUNSEL FOR THE COMPLAINANT AND COUNSEL FOR THE MOLDERS UNION. HE FURTHER SUBMITTED THAT FOR THE BOARD TO REFUSE TO ACCEPT JURISDICTION WOULD RESULT IN A NEGATION OF SECTION 3 OF THE ACT WHICH GUARANTEES THAT EVERY PERSON HAS THE RIGHT TO JOIN A TRADE UNION OF HIS CHOICE. COUNSEL FOR A.E. ANDERSON ADVISED THE BOARD THAT UPON INSTRUCTIONS FROM HIS CLIENT HE DID NOT PROPOSE TO MAKE ANY SUBMISSIONS ON THE ISSUE OF THE BOARD'S JURISDICTION. THE RESPONDENT DOFASCO WAS NOT REPRESENTED AT THE HEARING.

17. SUBSECTION (1) OF SECTION 66 READS:

THE BOARD MAY INQUIRE INTO A COMPLAINT THAT A TRADE UNION OR COUNCIL OF TRADE UNIONS, OR AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS, WAS OR IS REQUIRING AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION TO ASSIGN PARTICULAR WORK TO

EMPLOYEES IN A PARTICULAR TRADE UNION OR IN A PARTICULAR TRADE, CRAFT OR CLASS RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION OR IN ANOTHER TRADE, CRAFT OR CLASS, OR THAT AN EMPLOYER WAS OR IS ASSIGNING WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION, AND IT SHALL DIRECT WHAT ACTION, IF ANY, THE EMPLOYER, THE EMPLOYERS' ORGANIZATION, THE TRADE UNION OR THE COUNCIL OF TRADE UNIONS OR ANY OFFICER, OFFICIAL OR AGENT OF ANY OF THEM OR ANY EMPLOYEE SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE ASSIGNMENT OF WORK.

18. THE FIRST QUESTION THE BOARD MUST DECIDE IS WHETHER THE REFUSAL OF THE UNITED ASSOCIATION AND LOCAL 67 TO INSTALL THE PREFABRICATED PIPE HEADERS FABRICATED BY MEMBERS OF THE MOLDERS UNION EMPLOYED IN THE PLANT OF THE COMPLAINANT IN METROPOLITAN TORONTO CONSTITUTES A WORK ASSIGNMENT DISPUTE. COUNSEL FOR THE UNITED ASSOCIATION AND LOCAL 67 CLAIMS THAT THE PLUMBERS HAD NO QUARREL PER SE WITH THE WORK ASSIGNMENT MADE BY THE COMPLAINANT. RATHER THE UNITED ASSOCIATION MERELY INFORMED A.E. ANDERSON THAT IF PIPE HEADERS OR OTHER WELDED PIPE SECTIONS ARE PREFABRICATED BY OTHER THAN THE PLUMBERS, MEMBERS OF THE UNITED ASSOCIATION OR ITS LOCALS WILL NOT BE PERMITTED TO INSTALL THESE PRODUCTS. AS IS SET OUT IN PARAGRAPH 4 OF THE AGREED STATEMENT OF FACTS, THE PIPE HEADERS WITH WHICH WE ARE HERE CONCERNED GENERALLY ARE INSTALLED BY PIPE-FITTERS OR PLUMBERS. IN EFFECT THEN, WHAT THE UNITED ASSOCIATION AND LOCAL 67 ARE SAYING IS THAT IF THE COMPLAINANT WANTS TO REMAIN IN BUSINESS IT WILL HAVE TO EMPLOY PLUMBERS TO FABRICATE ITS PREFABRICATED WELDED PIPE SECTIONS. THE POSITION TAKEN BY THE UNITED ASSOCIATION AND LOCAL 67 COULD HARDLY BE A MORE DIRECT CHALLENGE TO THE WORK ASSIGNMENT MADE BY THE COMPLAINANT. IN OTHER WORDS, THERE IS A DISPUTE CONCERNING THE WORK ASSIGNMENT MADE BY THE COMPLAINANT. FOR COUNSEL TO SUBMIT THAT THE PLUMBERS HAVE NO QUARREL PER SE WITH THE WORK ASSIGNMENT MADE BY THE COMPLAINANT IS A SPECIOUS ARGUMENT.

19. ALTHOUGH THERE IS A WORK ASSIGNMENT DISPUTE ARISING OUT OF THE CHALLENGE MADE BY THE PLUMBERS TO THE ASSIGNMENT MADE TO THE MOLDERS UNION, THE FACT REMAINS THAT THE COMPLAINANT DOES NOT HAVE IN ITS EMPLOY ANY MEMBERS OF THE UNITED ASSOCIATION OR LOCAL 67. DESPITE THE URGING OF COUNSEL FOR THE COMPLAINANT TO DISTINGUISH THE JUDGMENTS OF McRUER C.J.H.C. AND GRANT J., THE BOARD IS BOUND BY THESE DECISIONS OF THE HIGH COURT. THEREFORE, UNTIL SUCH TIME AS JUDICIAL AUTHORITY OTHERWISE INDICATES, THE BOARD HAS NO ALTERNATIVE BUT TO CONCLUDE THAT IT IS WITHOUT JURISDICTION TO DEAL WITH THE INSTANT COMPLAINT.

20. THE COMPLAINT, ACCORDINGLY, IS DISMISSED.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATE

13876-67-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. ST. MARY'S OF THE LAKE HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
D. B. ARCHER AND J. E. C. ROBINSON.

DECISION OF THE BOARD: JANUARY 10, 1968.

1. THE APPLICANT, BY LETTER DATED DECEMBER 28TH, 1967, HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED DECEMBER 21ST, 1967.

2. THE APPLICANT IN ITS REQUEST HAS NOT ALLEGED THAT NEW EVIDENCE HAS COME TO ITS ATTENTION WHICH WAS NOT AVAILABLE TO IT AT THE HEARING IN THIS MATTER.

3. AS WAS STATED BY THE BOARD IN THE ROBERT McALPINE LTD. CASE, BOARD FILE NO. 12468-66-U:

"WE DO NOT BELIEVE THAT THE DISCRETIONARY POWER OF THE BOARD UNDER SECTION 79(1) OF THE ACT WAS INTENDED TO BE EXERCISED FOR THE PURPOSE OF PERMITTING A PARTY TO REPAIR THE DEFICIENCIES OF HIS CASE AS POINTED OUT IN A DECISION OF THE BOARD. IF SUCH WERE THE PRACTICE, PROCEEDINGS WOULD BE INTERMINABLE AND DECISIONS INCONCLUSIVE."

4. IN THE LIGHT OF THE FOREGOING, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER ITS DECISION AND THE REQUEST OF THE APPLICANT IS DENIED.

13941-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. KELSEY-HAYES CANADA LIMITED (RESPONDENT). V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

DECISION OF THE BOARD: JANUARY 23, 1968.

1. THE PARTIES HAVE REQUESTED THE BOARD TO REVIEW ITS DECISION DATED JANUARY 19TH, 1968, IN THIS MATTER.

2. THE PARTIES IN THIS MATTER HAVE AGREED THAT THE BARGAINING UNIT SHOULD BE DESCRIBED IN TERMS WHICH EXCLUDE FROM THE BARGAINING UNIT CERTAIN NAMED CLASSIFICATIONS. SOME OF THE CLASSIFICATIONS WHICH

THE PARTIES HAVE AGREED TO EXCLUDE FROM THE BARGAINING UNIT ARE USUALLY INCLUDED IN BARGAINING UNITS WHICH THE BOARD HAS FOUND TO BE APPROPRIATE IN OTHER CASES. WHILE THE BOARD HAS NOTED THE AGREEMENT OF THE PARTIES IN A CLARITY NOTE IN THIS CASE, THE BOARD DID NOT FOLLOW THE EXACT DESCRIPTION OF THE BARGAINING UNIT AS PROPOSED BY THE PARTIES.

3. ALTHOUGH THE PARTIES ARE FREE TO VARY THE DESCRIPTION OF BARGAINING UNITS WHICH THE BOARD FINDS TO BE APPROPRIATE, AND WHILE THE PARTIES ARE BOUND BY ANY AGREEMENT THEY VOLUNTARILY ENTER INTO, SUCH AGREEMENT IS NOT BINDING UPON THIRD PARTIES OR UPON THE BOARD.

4. WHILE THE BOARD NOTES THE AGREEMENT OF THE PARTIES FOR THE PURPOSE OF PUBLICLY RECORDING SUCH AGREEMENT, AND WHILE THE BOARD WILL NOT INTERFERE WITH THE AGREEMENT OF THE PARTIES, AS BETWEEN THEM, HOWEVER THE BOARD WILL NOT BECOME A PARTY TO ANY AGREEMENT THAT APPEARS TO BE CONTRARY TO THE BOARD'S USUAL PRACTICE IN DETERMINING APPROPRIATE BARGAINING UNITS, WHICH DETERMINATION THE BOARD IS REQUIRED TO MAKE PURSUANT TO THE PROVISIONS OF SECTION 6 OF THE ACT.

5. THE REQUEST OF THE PARTIES IS THEREFORE DENIED.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - TERMINATION

13563-67-R: MRS. BEATRICE LEVERE (APPLICANT) V. THE HOTELS CLUBS RESTAURANTS, TAVERNS, EMPLOYEE UNION LOCAL 261 (RESPONDENT).

(RE: BRUCE MACDONALD MOTOR LODGE,
BELLS CORNER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER D.B. ARCHER:

JANUARY 9, 1968.

1. THE APPLICANT IN A LETTER FROM HER SOLICITORS DATED JANUARY 3RD, 1968, HAS REQUESTED THE BOARD TO REVIEW ITS DECISION DATED DECEMBER 4TH, 1967 IN THIS MATTER.

2. THE APPLICANT HAS NOT ALLEGED THAT THERE IS NEW EVIDENCE NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER. THE APPLICANT IN HER LETTER ABOVE REFERRED TO CONCEDES THAT THE INSTANT APPLICATION IS RELATED TO AN APPLICATION BROUGHT BY MARIO PARADISO, THE APPLICANT IN AN EARLIER APPLICATION. THE BOARD IN ITS DECISION DATED DECEMBER 4TH, 1967 FOUND THAT SINCE MR. PARADISO DID NOT TESTIFY IN THIS MATTER CONCERNING THE ORIGINATION OF THE STATEMENTS OF DESIRE FILED IN SUPPORT OF THE INSTANT APPLICATION, WHICH STATEMENTS WERE ORIGINATED BY MR. PARADISO, THERE WAS NOT SUFFICIENT EVIDENCE ADDUCED AT THE HEARING IN THIS MATTER AS TO THE ORIGINATION OF THE DOCUMENTS FILED IN

SUPPORT OF THE INSTANT APPLICATION. THE APPLICANT HEREOFORER FAILED TO SATISFY THE ONUS ON HER TO ADDUCE EVIDENCE AS TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED.

3. SINCE THERE IS NO NEW EVIDENCE NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING, AND SINCE ALL THE ISSUES RAISED BY THE APPLICANT IN HER LETTER ABOVE REFERRED TO WERE CONSIDERED BY THE BOARD PRIOR TO THE BOARD ARRIVING AT ITS DECISION OF DECEMBER 4TH, 1967, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED DECEMBER 4TH, 1967, IN THIS MATTER.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

JANUARY 9, 1968.

WITHOUT DEROGATING FROM MY DISSENT OF DECEMBER 4TH, 1967 IN THIS MATTER, I CONCUR WITH THE DECISION OF THE MAJORITY THAT THE APPLICANT HAS NOT ESTABLISHED THAT THE BOARD SHOULD RECONSIDER, VARY OR REVOKE ITS DECISION OF DECEMBER 4TH, 1967 IN THIS MATTER.

13709-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. SPRING PLASTERING LIMITED (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

DECISION OF THE BOARD:

JANUARY 3, 1968.

1. THE APPLICANT, BY ITS LETTER DATED DECEMBER 18TH, 1967, HAS REQUESTED THE BOARD TO REVIEW ITS DECISION OF DECEMBER 13TH, 1967 ON THREE GROUNDS.

2. THE FIRST GROUND IS THAT THE APPLICANT AND THE INTERVENER HAVING ENTERED INTO A COLLECTIVE AGREEMENT IN FEBRUARY 1966, THE RESPONDENT IS THEREBY PREVENTED FROM DISCHARGING THE ONUS ON IT, UNDER SECTION 45A(3) OF THE ACT, THAT IT WAS ENTITLED TO REPRESENT THE EMPLOYEES OF THE INTERVENER.

3. IT IS TO BE NOTED THAT ONLY ONE OF THE PARTIES TO THE COLLECTIVE AGREEMENT, WHICH HAS BEEN CHALLENGED BY THE APPLICANT IN THIS APPLICATION, IS NAMED AS A RESPONDENT IN THESE PROCEEDINGS. THE COMPANY, SPRING PLASTERING LIMITED, INTERVENED IN THESE PROCEEDINGS ON OCTOBER 13TH, 1967 AND THE SOLICITORS FOR THE INTERVENER ON THAT DATE WROTE A LETTER TO THE BOARD WHICH ADVISED THAT THE COMPANY HAD EXECUTED A COLLECTIVE AGREEMENT IN FEBRUARY 1966 WITH THE APPLICANT. THERE WAS NOTHING IN THE INTERVENTION OR THE LETTER OF OCTOBER 13TH WHICH INDICATED THAT THE AGREEMENT COVERED THE UNIT OF EMPLOYEES WITH WHOM WE ARE HERE CONCERNED AND THE RESPONDENT CALLED NO EVIDENCE WHICH MIGHT HAVE ESTABLISHED THAT THE ALLEGED COLLECTIVE AGREEMENT WOULD ACT AS A BAR TO PREVENT THE RESPONDENT FROM ENTERING INTO A

COLLECTIVE AGREEMENT WITH THE INTERVENER.

4. THE APPLICANT DID NOT ALLEGE IN ITS APPLICATION OR ANY OTHER DOCUMENT THAT THERE WAS A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE INTERVENER.

5. AT THE HEARING THE APPLICANT, FOR THE FIRST TIME, ALLEGED THAT THERE WAS A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE INTERVENER WHICH WOULD PREVENT THE RESPONDENT AND THE INTERVENER FROM ENTERING INTO ANOTHER COLLECTIVE AGREEMENT COVERING THE SAME EMPLOYEES. THE APPLICANT FURTHER ADVISED THE BOARD THAT THERE WAS A CIVIL MATTER CURRENTLY PENDING BEFORE THE COURTS INVOLVING THE APPLICANT AND THE RESPONDENT IN WHICH THE EXISTENCE OF THE FEBRUARY 1966 AGREEMENT BETWEEN THE APPLICANT AND THE INTERVENER WAS IN ISSUE.

6. THE BOARD ADVISED THE PARTIES AT THE HEARING THAT SINCE THE QUESTION OF THE EXISTENCE OF THE FEBRUARY 1966 COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE INTERVENER WAS SUB JUDICE, THE BOARD WOULD NOT IN THESE PROCEEDINGS ENTERTAIN EVIDENCE AND ARGUMENT WITH RESPECT TO THE EXISTENCE OF SUCH COLLECTIVE AGREEMENT SINCE THE COURTS WERE ALREADY SEIZED WITH THE MATTER. THE BOARD ALSO ADVISED THE PARTIES THAT IT WAS OF OPINION THAT THE EXISTENCE OF A PRIOR COLLECTIVE AGREEMENT WHICH WOULD ACT AS A BAR TO A SUBSEQUENT COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WAS NOT AN ISSUE IN THESE PROCEEDINGS SINCE NO CHARGE HAD BEEN MADE IN WRITING BY THE APPLICANT, THAT THE RESPONDENT AND THE INTERVENER HAD, IN THE FACE OF A PRE-EXISTING COLLECTIVE AGREEMENT, ATTEMPTED TO EXECUTE A SUBSEQUENT COLLECTIVE AGREEMENT CONTRARY TO THE RELEVANT PROVISIONS OF THE ACT. UNLESS SUCH A CHARGE IS SPECIFICALLY MADE IN WRITING AS REQUIRED BY SECTION 47 OF THE BOARD'S RULES OF PROCEDURE, THE EXISTENCE OF A PRIOR COLLECTIVE AGREEMENT IS NOT AN ISSUE IN A PROCEEDING UNDER SECTION 45A OF THE ACT.

7. UNDER SECTION 45A OF THE ACT, THERE IS AN ASSUMPTION THAT A COLLECTIVE AGREEMENT ENTERED INTO VOLUNTARILY, IS A VALID COLLECTIVE AGREEMENT UNTIL THE BOARD OTHERWISE DECLARES. THE INTENT OF SECTION 45A IS TO PROVIDE AN OPPORTUNITY TO CHALLENGE A COLLECTIVE AGREEMENT "DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT" IS IN OPERATION. SUCH A CHALLENGE UNDER SECTION 45A CAN ONLY BE MADE DURING THE FIRST YEAR OF A FIRST COLLECTIVE AGREEMENT WHICH HAS BEEN MADE FOLLOWING VOLUNTARY RECOGNITION. A CHALLENGE TO A VOLUNTARY COLLECTIVE AGREEMENT UNDER SECTION 45A CAN ONLY BE MADE ON THE BASIS THAT THE MAJORITY OF THE EMPLOYEES DID NOT WISH TO BE REPRESENTED BY THE UNION AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO AND THEREFORE THE UNION WAS NOT ENTITLED TO REPRESENT THE EMPLOYEES. SECTION 45A(3) PLACES THE ONUS OF PROOF ON THE PARTIES TO THE COLLECTIVE AGREEMENT. SINCE ONLY THE UNION WAS NAMED AS A RESPONDENT IN THESE PROCEEDINGS, THE APPLICANT'S CHALLENGE WAS DIRECTED SOLELY AT THE RESPONDENT UNION. THE RESPONDENT WAS REQUIRED TO SATISFY THE ONUS ON IT BY ADDUCING EVIDENCE WHICH THE BOARD IN ITS

DECISION OF DECEMBER 13TH, 1967 FOUND TO BE SATISFACTORY EVIDENCE OF THE ENTITLEMENT OF THE RESPONDENT TO REPRESENT THE EMPLOYEES OF THE INTERVENER AT THE TIME THE APPLICATION WAS MADE.

8. IF THE ONUS REFERRED TO IN SECTION 45A(3) INCLUDED THE ONUS OF ESTABLISHING THAT THE COMPANY HAD NOT ENTERED INTO A PRIOR COLLECTIVE AGREEMENT WITH ANOTHER UNION, SUCH A NEGATIVE ONUS WOULD BE VIRTUALLY IMPOSSIBLE TO MEET. IN ADDITION, IF THE EXISTENCE OF A PRIOR COLLECTIVE AGREEMENT IS ALWAYS AN ISSUE IN PROCEEDINGS UNDER SECTION 45A, EVEN WHERE NO CHARGE IS MADE WITH RESPECT THERETO, THERE WOULD BE NO JUSTIFICATION FOR THE TIME LIMITATION FOR SUCH AN APPLICATION AS WE FIND IN SECTION 45A. WHILE THE BOARD IN ITS DECISION OF DECEMBER 13TH, 1967 REFUSED TO MAKE THE DECLARATION REQUESTED BY THE APPLICANT ON THE QUESTION OF ENTITLEMENT TO REPRESENT THE EMPLOYEES, SUCH A DECISION DOES NOT PRECLUDE THE APPLICANT FROM ATTACKING THE COLLECTIVE AGREEMENT IN A PROPER PROCEEDING ON THE BASIS THAT THERE WAS A VALID SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE INTERVENER AT THE TIME THE RESPONDENT'S COLLECTIVE AGREEMENT WAS EXECUTED.

9. SINCE THE APPLICANT DID NOT MAKE CHARGES OF UNFAIR CONDUCT IN WRITING AT THE PROPER TIME CONCERNING THE EXISTENCE OF THE EARLIER COLLECTIVE AGREEMENT, THE APPLICANT WAS THEREFORE NOT ENTITLED TO CALL EVIDENCE WITH RESPECT TO SUCH CHARGES AT THE HEARING IN THIS MATTER. (SEE FLECK MANUFACTURING LIMITED CASE, 62 CLLC 1046, C.L.S. 76-860.)

10. THE FACT THAT THE INTERVENER REFERRED TO AN EARLIER COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE INTERVENER IN ITS LETTER OF OCTOBER 13TH CANNOT CONSTITUTE CHARGES AGAINST THE RESPONDENT IN THESE PROCEEDINGS SINCE THE INTERVENER DID NOT SEEK ANY RELIEF. IN ANY EVENT, THE INTERVENER CALLED NO EVIDENCE AND APPEARED TO BE CONTENT TO SIT QUIETLY BY AND ENJOY THE SPECTACLE OF THE OTHER TWO PARTIES DOING BATTLE. IN THESE CIRCUMSTANCES, THE APPLICANT CANNOT RELY ON THE ALLEGATION MADE BY THE INTERVENER TO EVADE THE REQUIREMENTS OF SECTION 47(A) OF THE RULES TO THE DETRIMENT OF THE RESPONDENT, ALBEIT SUCH ADMISSION MAY WELL BE BINDING UPON THE INTERVENER.

11. AT THE HEARING, THE PARTIES HAVING BEEN ADVISED THAT THE BOARD WOULD NOT ENTERTAIN EVIDENCE AND ARGUMENT TO THE EFFECT THAT THE EXISTENCE OF THE EARLIER COLLECTIVE AGREEMENT WOULD PREVENT THE RESPONDENT FROM SATISFYING THE ONUS IMPOSED BY SECTION 45A(3), A QUESTION AROSE AS TO WHAT POSITION, IF ANY, AN OFFICIAL OF THE RESPONDENT HAD PREVIOUSLY HELD IN THE APPLICANT UNION. THE APPLICANT TENDERED THE FEBRUARY 1966 COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE INTERVENER TO ESTABLISH THAT THE RESPONDENT'S WITNESS HAD AFFIXED HIS SIGNATURE TO THE DOCUMENT AS AN OFFICIAL OF THE APPLICANT. THE BOARD, OVER THE OBJECTION OF THE RESPONDENT, RULED THAT THE DOCUMENT WAS ADMISSIBLE FOR THE LIMITED PURPOSE OF ESTABLISHING THAT THE WITNESS HAD PREVIOUSLY HELD OFFICE IN THE APPLICANT UNION. THE BOARD SPECIFICALLY RULED, HOWEVER, THAT IT WAS NOT RECEIVING THE DOCUMENT IN EVIDENCE FOR ANY OTHER PURPOSE AND NO EVIDENCE WAS CALLED BY THE APPLICANT TO PROVE THAT THE DOCUMENT WAS A VALID SUBSISTING

COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE INTERVENER AND NO ARGUMENT WAS DIRECTED TO THIS ISSUE AT THE CONCLUSION OF THE EVIDENCE.

12. FOR THE FOREGOING REASONS, THE BOARD DOES NOT DEEM IT ADVISABLE TO VARY OR REVOKE ITS DECISION OF DECEMBER 13TH, 1967 IN THIS MATTER ON THE BASIS OF THE FIRST GROUND OF OBJECTION RAISED BY THE APPLICANT IN ITS LETTER OF DECEMBER 18TH, 1967.

13. WITH RESPECT TO THE SECOND GROUND RAISED BY THE APPLICANT IN ITS LETTER, THE BOARD AT THE HEARING INDICATED THAT THE STATUS OF A UNION IS ALWAYS IN ISSUE THE FIRST TIME THE UNION APPEARS BEFORE THE BOARD WHERE SUCH UNION IS AN APPLICANT OR REQUESTS A DECLARATION TO BE MADE IN ITS FAVOUR. HOWEVER, THE BOARD TOOK NOTE OF THE FACT THAT IT HAS ADOPTED THE PRACTICE OF PUTTING AN APPLICANT UNION ON NOTICE PRIOR TO A HEARING WHERE IT STATUS HAD NOT BEEN PREVIOUSLY RECOGNIZED BY THE BOARD, THAT IT WILL BE REQUIRED TO ESTABLISH ITS STATUS AS A TRADE UNION UNDER SECTION 1(1)(J) OF THE ACT. SINCE THE RESPONDENT WAS NOT AN APPLICANT IN THIS CASE, NO SUCH NOTICE WAS GIVEN BY THE BOARD AND IN ADDITION THE APPLICANT DID NOT SPECIFICALLY CHALLENGE THE RESPONDENT'S STATUS PRIOR TO THE HEARING. IN THESE CIRCUMSTANCES, THE BOARD INDICATED THAT IF IT BECAME NECESSARY A FURTHER OPPORTUNITY WOULD BE GIVEN TO THE RESPONDENT TO ESTABLISH ITS STATUS SINCE IT WAS NOT PREPARED TO DO SO AT THE HEARING. THE BOARD, FOR THE PURPOSE OF DEALING WITH THE MANY OTHER ISSUES INVOLVED IN THIS CASE, ASSUMED THAT THE RESPONDENT WAS A TRADE UNION.

14. SECTION 45A(3) IMPOSES A DOUBLE ONUS ON THE RESPONDENT IN THESE PROCEEDINGS. THE RESPONDENT MUST ESTABLISH THAT IT IS A TRADE UNION AND THAT AS A TRADE UNION IT WAS ENTITLED TO REPRESENT THE EMPLOYEES OF THE INTERVENER AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO. THE BOARD DEALT WITH A SECOND ONUS IN ITS DECISION OF DECEMBER 13TH, 1967 AND BECAUSE ITS DECISION WAS FAVOURABLE TO THE RESPONDENT, THE FIRST ONUS BECAME RELEVANT. HOWEVER, LAPSUS MEMORIAE, THE BOARD NEGLECTED TO PROVIDE THE RESPONDENT WITH AN OPPORTUNITY TO ESTABLISH ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT IN ITS DECISION DATED DECEMBER 13TH, 1967.

15. THE BOARD THEREFORE DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO PROVIDE THE RESPONDENT WITH AN OPPORTUNITY TO ESTABLISH THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE ACT. AT THE HEARING, THE BOARD WILL HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE THIRD MATTER RAISED BY THE APPLICANT IN ITS LETTER OF DECEMBER 18TH, 1967 AND ALL OUTSTANDING ISSUES.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

14000-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
LOCAL UNION 93 (APPLICANT) V. B H. CONSTRUCTION INC. (RESPONDENT).

5. . . . THE JOB SITES AFFECTED BY THIS APPLICATION ARE SITUATED IN THE CITY OF OTTAWA. IN SUCH CIRCUMSTANCES THE BOARD WOULD NORMALLY GRANT A CERTIFICATE FOR THE GEOGRAPHIC AREA CONSISTING OF THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT. HOWEVER, IN ITS DECISION, DATED DECEMBER 18, IN CITY CONCRETE FORMING LIMITED, BOARD FILE 13693-67-R, THE BOARD INDICATED THAT THE TOWNSHIP OF MARLBOROUGH SHOULD NO LONGER BE EXCEPTED FROM THE AREA.

THE BOARD, THEREFORE, FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(JANUARY 4, 1968).

14004-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL UNION # 1071 (APPLICANT) V. E.S. MARTIN CONSTRUCTION LIMITED
(RESPONDENT).

6. THE APPLICANT APPLIED FOR A BARGAINING UNIT FOR "THE TOWNSHIPS OF HAMILTON, HALDIMAND, ALNWICK, AND SOUTH MONAGHAN IN NORTHUMBERLAND COUNTY AND HOPE TOWNSHIP IN DURHAM COUNTY". THE REGULAR BOARD AREA #10 CONSISTS OF THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON AND HALDIMAND IN THE COUNTY OF NORTHUMBERLAND. WHILE THE BOARD IS PREPARED TO ADD THE TOWNSHIP OF ALNWICK TO AREA #10, IT IS NOT PREPARED TO DEAL WITH THE TOWNSHIP OF SOUTH MONAGHAN IN NORTHUMBERLAND COUNTY OR THE TOWNSHIP OF CAVAN IN DURHAM COUNTY PENDING THE COMPLETION OF STUDIES PRESENTLY UNDERTAKEN BY THE BOARD. THE BOARD, THEREFORE, FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND IN THE TOWNSHIPS OF HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(JANUARY 4, 1968).

14047-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL UNION #397 (APPLICANT) V. THE MITCHELL CONSTRUCTION COMPANY
(CANADA) (RESPONDENT).

6. THE RESPONDENT HAS REQUESTED A HEARING ON THE GROUND THAT THE APPLICATION IS UNNECESSARY BECAUSE THE RESPONDENT HAS APPLIED FOR MEMBERSHIP IN THE OSHAWA AND DISTRICT CONSTRUCTION EXCHANGE AND AS A MEMBER OF THE EXCHANGE THE RESPONDENT WILL BE AN AUTOMATIC SIGNATORY TO THE EXISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE EXCHANGE. THE SIMPLE ANSWER TO THIS ALLEGATION IS THAT THERE IS NOTHING BEFORE THE BOARD TO SUGGEST THAT THE RESPONDENT IS A MEMBER OF THE EXCHANGE. MOREOVER, THERE IS NOTHING TO SHOW THAT THE RESPONDENT WILL BE ACCEPTED AS A MEMBER. FURTHERMORE, EVEN ASSUMING THAT THE RESPONDENT IS ACCEPTED INTO MEMBERSHIP, THIS DOES NOT MEAN THAT THE COMPANY AUTOMATICALLY BECOMES BOUND BY THE COLLECTIVE AGREEMENT BETWEEN THE EXCHANGE AND THE APPLICANT. SEE FOUNDATION COMPANY OF CANADA LIMITED, (1957) CCH CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 55 - 59, PARA. 16078, CLS 76-555. BE THAT AS IT MAY, IT IS CLEAR THAT AT THE PRESENT TIME, THE APPLICANT DOES NOT HAVE BARGAINING RIGHTS FOR EMPLOYEES IN THE PROPOSED BARGAINING UNIT AND IT IS ENTITLED UNDER SECTION 5 OF THE LABOUR RELATIONS ACT TO MAKE THIS APPLICATION. IN THESE CIRCUMSTANCES, AND HAVING REGARD TO THE PROVISIONS OF SECTION 75 (9A) OF THE ACT, THE BOARD DOES NOT DEEM IT ADVISABLE TO HOLD A HEARING IN THIS CASE.

(JANUARY 24, 1968).

STATISTICAL TABLES FOR JANUARY 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		JANUARY 1968	1ST 10 MONTHS OF 1967-68	FISCAL YEAR 1966-67
I.	CERTIFICATION	62	758	772
II.	DECLARATION TERMINATING BARGAINING RIGHTS	11	80	35
III.	DECLARATION OF SUCCESSOR STATUS	-	16	12
IV.	DECLARATION THAT STRIKE UNLAWFUL	-	31	28
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	12	1
VI.	CONSENT TO PROSECUTE	2	83	80
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	9	143	93
VIII.	MISCELLANEOUS	<u>1</u>	<u>61</u>	<u>53</u>
TOTAL		<u>85</u>	<u>1184</u>	<u>1074</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		JANUARY 1968	1ST 10 MONTHS OF 1967-68	FISCAL YEAR 1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		66	729	775

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		JANUARY 1ST 1968	10 MTHS OF FISCAL YR. 1967-68	1966-67
I.	CERTIFICATION	69	787	797
II.	DECLARATION TERMINATING BARGAINING RIGHTS	11	78	29
III.	DECLARATION OF SUCCESSOR STATUS	1	13	10
IV.	DECLARATION THAT STRIKE UNLAWFUL	-	31	27
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	12	1
VI.	CONSENT TO PROSECUTE	6	87	66
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	17	154	100
VIII.	MISCELLANEOUS	<u>5</u>	<u>61</u>	<u>62</u>
TOTAL		<u>109</u>	<u>1223</u>	<u>1092</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>JANUARY</u> <u>1968</u>	<u>1ST 10 MTHS</u> <u>1967-68</u>	<u>FISCAL YR.</u> <u>1966-67</u>	<u>JANUARY</u> <u>1968</u>	<u>1ST 10 MTHS</u> <u>1967-68</u>	<u>FISCAL Y</u> <u>1966-67</u>
I. <u>CERTIFICATION</u>						
GRANTED	49	553	587	5578	22971	1766
DISMISSED	16	172	142	349	10450	11077
WITHDRAWN	<u>4</u>	<u>62</u>	<u>68</u>	<u>233</u>	<u>1480</u>	<u>941</u>
TOTAL	<u>69</u>	<u>787</u>	<u>797</u>	<u>6160</u>	<u>34901</u>	<u>13784</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	3	34	17	210	948	553
DISMISSED	8	42	11	37	972	279
WITHDRAWN	<u>-</u>	<u>2</u>	<u>1</u>	<u>-</u>	<u>41</u>	<u>203</u>
TOTAL	<u>11</u>	<u>78</u>	<u>29</u>	<u>247</u>	<u>1961</u>	<u>1035</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>JANUARY</u>	<u>1ST 10 MONTHS OF FISCAL YR.</u>	
		<u>1968</u>	<u>1967-68</u>	<u>1966-67</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	3	4
	DISMISSED	-	3	2
	WITHDRAWN	-	<u>25</u>	<u>21</u>
	TOTAL	<u>-</u>	<u>31</u>	<u>27</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	1	-
	WITHDRAWN	-	<u>11</u>	<u>1</u>
	TOTAL	<u>-</u>	<u>12</u>	<u>1</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	1	6	7
	DISMISSED	3	11	11
	WITHDRAWN	<u>2</u>	<u>70</u>	<u>48</u>
	TOTAL	<u>6</u>	<u>87</u>	<u>66</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JANUARY 1968	1ST 10 MTHS OF FISCAL YR. 1967-68	1966-67
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	6	18	16
POST-HEARING VOTE	5	38	32
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	11	9
POST-HEARING VOTE	4	33	52
BALLOTS NOT COUNTED	-	3	-
TOTAL	<u>15</u>	<u>103</u>	<u>109</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JANUARY 1968	1ST 10 MTHS OF FISCAL YR. 1967-68	1966-67
*RESPONDENT UNION SUCCESSFUL	-	1	4
RESPONDENT UNION UNSUCCESSFUL	<u>2</u>	<u>17</u>	<u>14</u>
TOTAL	<u>2</u>	<u>18</u>	<u>18</u>

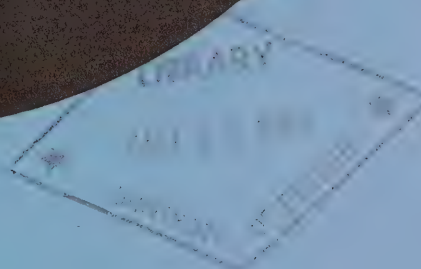
*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
DURING FEBRUARY 1968

BARGAINING AGENTS CERTIFIED DURING FEBRUARY

NO VOTE CONDUCTED

13483-67-R: NURSES' ASSOCIATION ST. JOSEPH'S GENERAL HOSPITAL (APPLICANT)
V. ST. JOSEPH'S GENERAL HOSPITAL, BLIND RIVER (RESPONDENT).

UNIT #1: "ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT BLIND RIVER ENGAGED IN A NURSING CAPACITY, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT BLIND RIVER ENGAGED IN A NURSING CAPACITY, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE." (15 EMPLOYEES IN THE UNIT).

14015-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. HI WAY MARKET LIMITED (RESPONDENT).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER REGULARLY EMPLOYED FOR 24 HOURS PER WEEK OR LESS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD SAVE AND EXCEPT OFFICE AND FIELD SALES STAFF AND SECURITY STAFF." (151 EMPLOYEES IN THE UNIT).

UNIT #2: WHICH WAS DISMISSED AFTER A VOTE IS REPORTED ON PAGE 1084.

14037-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. SILVERWOOD DAIRIES LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT ACCOUNTANT, PERSONS ABOVE THE RANK OF ACCOUNTANT, AND SECRETARY TO MANAGEMENT." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14049-67-R: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197, A.F.L.-C.I.O.-C.L.C. IN HAMILTON, ONTARIO (APPLICANT) V. WINDSOR HOTEL (HAMILTON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER AND OFFICE STAFF." (20 EMPLOYEES IN THE UNIT).

14055-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. TORONTO PLASTERING COMPANY LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1108).

14062-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. O'DAY (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (36 EMPLOYEES IN THE UNIT).

14063-67-R: INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION (APPLICANT) V. QUALITY PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (29 EMPLOYEES IN THE UNIT).

14065-67-R: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. THE KELLY-SPRINGFIELD TIRE COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS WAREHOUSE OPERATIONS IN THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

14071-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. UNIVERSITY OF WESTERN ONTARIO (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE MAIN HEATING PLANT, BOILER ROOM, AND RINK OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT THE CHIEF ENGINEER." (13 EMPLOYEES IN THE UNIT).

14079-67-R: SAULT STE. MARIE GENERAL WORKERS UNION, LOCAL 1644, C.L.C. (APPLICANT) V. PETER BREDIN LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SAULT STE. MARIE, SAVE AND EXCEPT CAR SALESMEN, SERVICE SALESMEN, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND CLERICAL STAFF." (6 EMPLOYEES IN THE UNIT).

14080-67-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. C. R. SNELGROVE CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY, COLLEGE OR TECHNICAL SCHOOL OR ON A GRADUATE TRAINING PROGRAM, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (130 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14081-67-R: LOCAL UNION 773 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. KINGSVILLE PUBLIC UTILITIES COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

14083-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. STEDS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14084-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. AJAX ENGINEERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ACTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT).

14085-67-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DRUG TRADING COMPANY LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SCARBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (65 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 1105).

14088-67-R: NURSES' ASSOCIATION MIDDLESEX COUNTY HEALTH UNIT (APPLICANT) V. MIDDLESEX COUNTY HEALTH UNIT (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT SAVE AND EXCEPT SUPERVISORS OF NURSING AND PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSING." (10 EMPLOYEES IN THE UNIT).

14091-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. STEDS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF DYMAND, BUCKE AND COLEMAN AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO IN THE DISTRICT OF TIMISKAMING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14092-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. DUFFERIN MATERIAL AND CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14093-67-R: NURSES' ASSOCIATION THE HAMILTON AND DISTRICT SCHOOL OF NURSING (APPLICANT) V. THE HAMILTON AND DISTRICT SCHOOL OF NURSING (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT THE ASSOCIATE DIRECTORS AND PERSONS ABOVE THE RANK OF ASSOCIATE DIRECTOR." (16 EMPLOYEES IN THE UNIT).

14103-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. BORDER CITY-HOLLAND (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (59 EMPLOYEES IN THE UNIT).

14116-67-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CANADA BREAD Co. LTD. (RESPONDENT).

UNIT: "ALL GARAGE EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN." (4 EMPLOYEES IN THE UNIT).

(IN ALL THE CIRCUMSTANCES OF THIS CASE AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14121-67-R: TORONTO PRINTING PRESSMEN AND ASSISTANTS UNION No. 10 (APPLICANT) V. IMPRESSIONS LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS LOCAL # 28 (INTERVENER).

UNIT: "ALL JOURNEYMEN PRESSMEN, ASSISTANT PRESSMEN, COMPOSITORS AND THEIR APPRENTICES IN THE COMPOSING, PRESS AND OFFSET PREPARATORY DEPARTMENTS IN THE EMPLOY OF THE RESPONDENT AT ITS PLANT ON BRIDGELAND AVENUE IN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14124-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DUFFERIN MATERIALS & CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

14125-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. D. A. SINCLAIR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

14127-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. MASTER MECHANICAL MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE AND SALES STAFF." (50 EMPLOYEES IN THE UNIT).

14130-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879 (APPLICANT) V. DUFFERIN MATERIALS & CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND DIVISION No. 3 OF THE CANADIAN CONSTRUCTION WORKERS UNION, (N.C.C.L.)." (4 EMPLOYEES IN THE UNIT).

THE ATTENTION OF THE PARTIES IS DIRECTED TO CEDARHURST PAVING CO. LIMITED, O.L.R.B. MONTHLY REPORT DECEMBER 1964, P. 442.

14131-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) V. MONTEITH - McGRATH LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY (EXCEPTING THEREFROM THE TOWNSHIPS OF NORMANBY, EGREMONT AND PROTON), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

14134-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597
(APPLICANT) V. M. H. ROLLINS CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14139-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V.
RAYMOND'S NUT SHOPS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (70 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PLANT CLERICAL EMPLOYEES, QUALITY CONTROL TECHNICIANS AND LABORATORY TECHNICIANS ARE EMPLOYEES OF THE RESPONDENT EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

FOR THE PURPOSES OF CLARITY THE BOARD FURTHER NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD RECEIVER AND HEAD SHIPPER ARE EQUAL TO OR ABOVE THE RANK OF FOREMAN AND ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF FOREMAN.

14141-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. GEORGE WIMPEY CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14146-67-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) V. THE PHILIP CAREY COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (41 EMPLOYEES IN THE UNIT).

14149-67-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 607 (APPLICANT) V. FRED BARBINI LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF THE TOWN OF KAPUSKASING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14150-67-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 353 (APPLICANT) V. THE GOVERNORS OF THE UNIVERSITY OF TORONTO (RESPONDENT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 46 (INTERVENER #1) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 204 (INTERVENER #2).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WORKING IN AND OUT OF ITS PHYSICAL PLANT DEPARTMENT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

IN THE CIRCUMSTANCES OF THIS CASE AND HAVING REGARD TO THE PREVIOUS FINDINGS OF THE BOARD IN GOVERNORS OF THE UNIVERSITY OF TORONTO, O.L.R.B. MONTHLY REPORT, MAY 1966, PAGE 81, AND IN GOVERNORS OF THE UNIVERSITY OF TORONTO, O.L.R.B. MONTHLY REPORT, MARCH 1967, PAGE 936.

14160-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL #1450 (APPLICANT) V. M.H. ROLLINS CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14161-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (APPLICANT) V. LAURENTIAN CONCRETE FORMS LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY, AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

14165-67-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA (APPLICANT) V. W. F. FLYNN & CO. (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14166-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 1988 (APPLICANT) v. FOLEY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE
RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH
CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY, AND KITLEY IN THE COUNTY
OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE
COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE
THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

14008-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. NORTHERN
ELECTRIC COMPANY LIMITED (RESPONDENT) v. NORTHERN ELECTRIC EMPLOYEES
ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS "LONDON WORKS" AT LONDON,
SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, MEMBERS
OF A MEDICAL DEPARTMENT, OFFICE STAFF, SECURITY GUARDS, AND PERSONS COVERED
BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CANADIAN UNION OF
OPERATING ENGINEERS AND THE RESPONDENT." (978 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS
EMPLOYED BY THE RESPONDENT AS INSTALLERS ARE NOT EMPLOYEES OF THE RESPONDENT
INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	951
NUMBER OF PERSONS WHO CAST BALLOTS	945
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF SPOILED BALLOTS	24
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	780
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	139

14046-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. POWER
CONTROLS DIVISION - MIDLAND-ROSS OF CANADA LIMITED (RESPONDENT) v.
SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL #540 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND
PLANT GUARDS." (149 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE BARGAINING HISTORY WITH RESPECT TO THE EXCLUSION OF TECHNICIANS AND FACTORY CLERICAL EMPLOYEES, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT TECHNICIANS AND FACTORY CLERICAL EMPLOYEES ARE NOT INCLUDED IN THE BARGAINING UNIT.

FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE FACTORY CLERICAL EMPLOYEES CONSISTED OF TWO TIME-KEEPERS AND THE TECHNICIANS CONSISTED OF THREE LAB TECHNICIANS.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		139
NUMBER OF PERSONS WHO CAST BALLOTS	138	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	128	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	10	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

13691-67-R: DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA AFL-CIO (APPLICANT) V. BARTON DISTILLING (CANADA) LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

- AND -

13695-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. BARTON DISTILLING (CANADA) LIMITED (RESPONDENT) V. DISTILLERY, RECTIFYING, WINE AND ALLIED INTERNATIONAL UNION OF AMERICA, AFL-CIO (INTERVENER).

THE ABOVE APPLICATIONS ARE CONSOLIDATED.

UNIT #1: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT AT COLLINGWOOD, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		6
NUMBER OF PERSONS WHO CAST BALLOTS	6	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA AFL-CIO	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT CANADIAN UNION OF OPERATING ENGINEERS	4	

(CANADIAN UNION OF OPERATING ENGINEERS CERTIFIED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY THE CERTIFICATE OF THE BOARD OF EVEN DATE HERewith ISSUED TO CANADIAN UNION OF OPERATING ENGINEERS." (14 EMPLOYEES IN THE UNIT).

(DISTILLERY, RECTIFYING, WINE AND ALLIED WORKERS' INTERNATIONAL UNION OF AMERICA AFL-CIO CERTIFIED).

13969-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. JOHN INGLIS Co. LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

- AND -

13970-67-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. JOHN INGLIS Co. LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

(THE ABOVE APPLICATIONS ARE CONSOLIDATED).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT IN SALT FLEET TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (94 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		94
NUMBER OF PERSONS WHO CAST BALLOTS	96	
BALLOTS SEGREGATED AND		
NOT COUNTED	4	
NUMBER OF SPOILED BALLOTS	35	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT UNITED STEELWORKERS		
OF AMERICA	30	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT UNITED ELECTRICAL,		
RADIO AND MACHINE WORKERS OF		
AMERICA (UE).	27	

(APPLICATIONS OF THE UNITED STEELWORKERS OF AMERICA AND UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) DISMISSED).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT SALT FLEET TOWNSHIP, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'		
LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT UNITED STEELWORKERS OF AMERICA	0
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772	4

(INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 CERTIFIED)

(SEE INDEXED ENDORSEMENT PAGE 1099).

13996-67-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION, C.L.C. (APPLICANT) V. NELSON CRUSHED STONE DIVISION OF KING PAVING & MATERIALS LIMITED (RESPONDENT) V. CANADIAN CONSTRUCTION WORKERS' UNION DIVISION #6, OF THE NATIONAL COUNCIL OF CANADIAN LABOUR (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND SECURITY GUARDS." (61 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	56
NUMBER OF PERSONS WHO CAST BALLOTS	53
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	36
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	16

14014-67-R: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. WHEATLEY MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (71 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	69
NUMBER OF PERSONS WHO CAST BALLOTS	69
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	64
NUMBER OF BALLOTS MARKED IN FAVOUR OF WHEATLEY MANUFACTURING EMPLOYEES ASSOCIATION	5

14026-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. WHEATLEY MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF. (26 EMPLOYEES IN THE UNIT)

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	23
NUMBER OF PERSONS WHO CAST BALLOTS	23
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	17
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF WHEATLEY MANUFACTURING EMPLOYEES	
ASSOCIATION	6

APPLICATIONS FOR CERTIFICATION DISMISSED DURING FEBRUARY

NO VOTE CONDUCTED

13701-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79 (INTERVENER). (15 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1096).

13958-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. THE NIAGARA WIRE WEAVING COMPANY, LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT IN NIAGARA FALLS, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 1098).

14043-67-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 280, A.F.L. C.I.O. C.L.C. (APPLICANT) V. HARVED HOTEL ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL TAPMEN, BARTENDERS, BEVERAGE WAITERS, WAITRESSES, LOUNGE WAITERS, BARBOYS AND IMPROVERS IN THE EMPLOY OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14064-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. J & C MACHINERY MOVERS (RESPONDENT). (7 EMPLOYEES).

14075-67-R: LOCAL UNION 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (APPLICANT) V. BENDAH ELECTRIC CONTRACTOR (RESPONDENT). (4 EMPLOYEES).

14100-67-R: INTERNATIONAL LABOURERS' UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. LAURENTIAN CONCRETE FORMS LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (INTERVENER). (2 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1106).

14107-67-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 117 (APPLICANT) V. BELMONT PLASTERING CO. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER) (11 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1106).

14108-67-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 117 (APPLICANT) V. ONORIO & CO. PLASTERING LIMITED (RESPONDENT). (7 EMPLOYEES).

14109-67-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 117 (APPLICANT) V. MAREL CONTRACTORS (RESPONDENT) (13 EMPLOYEES).

14110-67-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 117 (APPLICANT) V. PROGRESS PLASTERING CO. LTD. (RESPONDENT) (3 EMPLOYEES).

14111-67-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 117 (APPLICANT) V. KINGSWAY PLASTERING CO. LTD. (RESPONDENT) (15 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

14039-67-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. PROVINCIAL GAS COMPANY (RESPONDENT) V. THE UNITED ELECTRICAL RADIO & MACHINE WORKERS OF AMERICA (UE) AND ITS LOCAL 517 (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENTS; ASSISTANT SUPERINTENDENTS; ENGINEERS; FOREMEN; INSPECTORS; SUPERVISORS, CLERICAL WORKERS." (109 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	107
NUMBER OF PERSONS WHO CAST BALLOTS	107
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	52
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	55

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13326-67-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. GLENN JANTZI LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(44 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		40
NUMBER OF PERSONS WHO CAST BALLOTS	39	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	23	

13893-67-R: INTERNATIONAL UNION, UNITED PLANT GUARD WORKERS OF AMERICA, AMALGAMATED PLANT GUARDS, LOCAL 1958 (APPLICANT) V. PILKINGTON BROTHERS (CANADA) LIMITED, PILKINGTON GLASS MANUFACTURING DIVISION (RESPONDENT).

UNIT: "ALL SECURITY GUARDS IN THE EMPLOY OF THE RESPONDENT AT ITS PLANT IN THE BOROUGH OF SCARBOROUGH, SAVE AND EXCEPT SECURITY SERGEANTS AND PERSONS ABOVE THE RANK OF SECURITY SERGEANT." (8 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		8
NUMBER OF PERSONS WHO CAST BALLOTS	8	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5	

14015-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. HI WAY MARKET LIMITED (RESPONDENT).

UNIT #2: "ALL OFFICE STAFF REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IN THE EMPLOY OF THE RESPONDENT AT KITCHENER." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	2	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING FEBRUARY

- 14012-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL NO. 506 (APPLICANT) V. TWIN MASONRY LIMITED (RESPONDENT). (26 EMPLOYEES).
- 14095-67-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. WELLAND FORGE LIMITED (RESPONDENT) (23 EMPLOYEES).
- 14119-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. L. MCGILL ALLAN LTD. (RESPONDENT). (11 EMPLOYEES).
- 14145-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. MONTEITH AND MCGRATH LTD., CONTRACTORS (RESPONDENT). (NO EMPLOYEES).
- 14169-67-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 636 (APPLICANT) V. UNITED CANNERS LIMITED (RESPONDENT). (5 EMPLOYEES).
- 14187-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. MOBILAB INCORPORATED (RESPONDENT). (6 EMPLOYEES).
- 14194-67-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 81 (APPLICANT) V. MCKELLAR GENERAL HOSPITAL (RESPONDENT). (112 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
DURING FEBRUARY

13923-67-R: ARTHUR OTT (APPLICANT) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) V. SILVERWOOD DAIRIES, LIMITED, NORTH BAY BRANCH (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF SILVERWOOD DAIRIES, LIMITED, NORTH BAY BRANCH "IN OR ABOUT ITS PLANT IN THE CITY OF NORTH BAY WHO COME WITHIN THE BARGAINING UNIT, EXCEPT OFFICE STAFF, MILK ROUTE FOREMEN, FOREMEN, ICE CREAM TERRITORY SUPERVISORS AND THOSE ABOVE THESE RANKS." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		33
NUMBER OF PERSONS WHO CAST BALLOTS	32	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	14	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	18	

13754-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. ROGERS PLASTERING COMPANY LIMITED (INTERVENER) (21 EMPLOYEES). (GRANTED).

13744-67-R: THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (APPLICANT) V. THE CANADIAN PLASTERERS' UNION (RESPONDENT) V. ONTARIO PLASTERING CONTRACTORS (INTERVENER). (3 EMPLOYEES). (GRANTED).

14033-67-R: WILLIAM HANDYSIDE (APPLICANT) V. INTERNATIONAL CHEMICAL WORKERS UNION (RESPONDENT) V. BOYLE-MIDWAY (CANADA) LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF BOYLE-MIDWAY (CANADA) LIMITED IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	40
NUMBER OF PERSONS WHO CAST BALLOTS	39
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	4
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	35

14059-67-R: JOE LEWIS (APPLICANT) V. TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (RESPONDENT). (24 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1111).

14101-67-R: HECTOR POIRIER (APPLICANT) V. CANADIAN CONSTRUCTION WORKER'S UNION DIVISION No. 1. N.C.C.L. (RESPONDENT). (12 EMPLOYEES). (WITHDRAWN).

14118-67-R: CHARLES A. SAMMONS (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 134 (RESPONDENT) V. ART GALLERY OF ONTARIO (INTERVENER). (3 EMPLOYEES). (GRANTED).

14128-67-R: HECTOR POIRIER (APPLICANT) V. CANADIAN CONSTRUCTION WORKERS' UNION DIVISION No. 1 N. C. C. L. (RESPONDENT). (12 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1112).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING
FEBRUARY

13973-67-R: INTERNATIONAL UNION UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT). GROUP OF EMPLOYEES (OBJECTORS). (GRANTED).

13988-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION (DISTRICT 15) (PREDECESSOR TRADE UNION) V. GROUP OF EMPLOYEES (OBJECTORS). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING FEBRUARY

14171-67-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) V. KAI OLSEN ET AL (SEE ATTACHED LIST) (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING FEBRUARY

14090-67-U: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. HENRY ALPHONSE DUQUETTE (I.G.A. FOODLINER, TILBURY) (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1114).

14112-67-U: FRANKEL STRUCTURAL STEEL LIMITED (APPLICANT) V. CERTAIN EMPLOYEES OF THE APPLICANT - MEMBERS OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, AND ORNAMENTAL IRON WORKERS, LOCALS 721 AND 736 NAMED ON THE ATTACHED LIST (RESPONDENTS). (WITHDRAWN).

14113-67-U: FRANKEL STRUCTURAL STEEL LIMITED (APPLICANT) V. ALLAN MACISAAC AND LOCAL 721 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (RESPONDENTS). (WITHDRAWN).

14170-67-U: PIGOTT CONSTRUCTION COMPANY LIMITED (APPLICANT) V. KAI OLSEN ET AL (SEE ATTACHED LIST) (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING FEBRUARY

13898-67-U: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA, LOCAL 905 (COMPLAINANT) V. FISHER-PRICE TOYS (CANADA) LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1116).

13992-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. PAYNE METAL ENTERPRISES LTD. (RESPONDENT). (WITHDRAWN).

14018-67-U: INTERNATIONAL JEWELRY WORKERS UNION (COMPLAINANT) V. M. Z. M. LABORATORY LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1119).

14097-67-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. SHOPPERS CITY LIMITED (CENTRAL SUPERMARKETS LIMITED) (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

14070-67-M: LAUNDRY, DRY CLEANING & DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351, AND ANCHOR TEXTILES LIMITED (APPLICANTS). (GRANTED).

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT)

14140-67-M: J. R. CANVIN (COMPLAINANT) V. CANADIAN UNION OF OPERATING ENGINEERS (RESPONDENT). (DISMISSED).

SEE INDEXED ENDORSEMENT PAGE 1113).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

FEBRUARY

13428-67-M: OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION, CLC, LOCAL 418 (APPLICANT) V. DOMTAR PULP & PAPER LIMITED (RESPONDENT). (GRANTED).

14106-67-M: LOCAL 973 CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF GUELPH (RESPONDENT). (WITHDRAWN).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

13976-67-M: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (TRADE UNION) V. DELUCA & MASCARIN CONTRACTING LIMITED (EMPLOYER). (DISMISSED).

JURISDICTIONAL DISPUTE

14136-67-JD: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (COMPLAINANT) V. THE HYDRO ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13456-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. KING OPTICAL COMPANY (RESPONDENT) V. CANADIAN OPTICAL WORKERS' UNION 202 - N.C.C.L. (INTERVENER). (REQUEST DENIED).

13575-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. SCARBOROUGH CENTENARY HOSPITAL ASSOCIATION (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1127).

13794-67-R: THE METHODS, WAGE RATE AND SENIOR COST TECHNICIANS' ASSOCIATION OF ONTARIO, LOCAL 166, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. TRANE COMPANY OF CANADA, LIMITED (RESPONDENT). (REQUEST DENIED).

13951-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INSPIRATION LIMITED, MINING SERVICES DIVISION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1127).

14007-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. VERSAFOOD SERVICES LIMITED, INSTITUTIONS DIVISION (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1128).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 63

13965-67-M: GUTSFELD'S WELDING EXPERT IN BUILDUP & HARDFACING 13 LONDON ST. N. HAMILTON, ONT. PHONE LI 7-3056 (COMPLAINANT) V. UNITED STEELWORKERS UNION OF AMERICA (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 1129).

INDEXED ENDORSEMENTS - CERTIFICATION

13786-67-R: CANADIAN TEXTILE COUNCIL (APPLICANT) V. THE WATSON MANUFACTURING COMPANY OF PARIS LIMITED (RESPONDENT) V. TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

DECISION OF THE BOARD: FEBRUARY 12, 1968.

1. THE APPLICANT APPLIED TO BE CERTIFIED FOR CERTAIN EMPLOYEES OF THE RESPONDENT. THE INTERVENER FILED AN INTERVENER'S APPLICATION FOR

CERTIFICATION FOR THE SAME EMPLOYEES. THE BOARD IN ITS DECISION DATED DECEMBER 28TH, 1967, DISMISSED THE INTERVENER'S APPLICATION FOR CERTIFICATION FOR THE REASONS CONTAINED THEREIN AND DIRECTED A REPRESENTATION VOTE AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, WHEREIN THE EMPLOYEES WERE ASKED TO INDICATE WHETHER OR NOT THEY WISHED TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

2. THE REPRESENTATION VOTE DIRECTED BY THE BOARD WAS TAKEN ON JANUARY 25TH, 1968. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE AND WITHIN THE TIME PROVIDED BY SECTION 45 OF THE BOARD'S RULES OF PROCEDURE, THE APPLICANT BY LETTER MAILED REGISTERED MAIL ON FEBRUARY 2ND, 1968, FILED A STATEMENT OF DESIRE TO MAKE REPRESENTATIONS WITH RESPECT TO THE REPRESENTATION VOTE. THIS STATEMENT WAS RECEIVED BY THE BOARD ON MONDAY, FEBRUARY 5TH, 1968. THE APPLICANT MADE ALLEGATIONS OF UNFAIR CONDUCT AGAINST THE RESPONDENT AND THE INTERVENER.

3. THE RESPONDENT BY TELEGRAM DATED FEBRUARY 6TH, REQUESTED FURTHER PARTICULARS OF THE APPLICANT'S CHARGES OF IMPROPER OR IRREGULAR CONDUCT AND STATED THAT UNLESS SUCH PARTICULARS WERE PROVIDED ON OR BEFORE FEBRUARY 7TH, THE RESPONDENT MIGHT FIND IT NECESSARY TO REQUEST AN ADJOURNMENT OF THE HEARING WHICH HAD BEEN SCHEDULED FOR MONDAY, FEBRUARY 12TH, TO INQUIRE INTO THE APPLICANT'S ALLEGATIONS. ON FEBRUARY 7TH, THE APPLICANT AND THE RESPONDENT AGREED TO POSTPONE THE HEARING WHICH WAS SCHEDULED FOR FEBRUARY 12TH, AND THE APPLICANT REQUESTED THAT THE HEARING BE HELD IN BRANTFORD BECAUSE OF THE LARGE NUMBER OF WITNESSES THE APPLICANT INTENDED TO CALL IN SUPPORT OF ITS ALLEGATIONS.

4. THE BOARD FORWARDED TO THE INTERVENER ON FEBRUARY 5TH, 1968 A COPY OF THE APPLICANT'S ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT TOGETHER WITH A NOTICE OF THE HEARING WHICH WAS SCHEDULED FOR FEBRUARY 12TH. THE INTERVENER WAS SUBSEQUENTLY ADVISED OF THE APPLICANT'S AND THE RESPONDENT'S AGREEMENT TO ADJOURN THE HEARING IN THIS MATTER.

5. THE INTERVENER BY LETTER DATED FEBRUARY 8TH, 1968, OPPOSED THE REQUEST OF THE APPLICANT AND THE RESPONDENT FOR AN ADJOURNMENT AND DEMANDED THAT THE APPLICANT FILE PARTICULARS OF THE ALLEGATIONS MADE AGAINST THE INTERVENER FORTHWITH.

6. IN VIEW OF THE FACT THAT THE INTERVENER REQUESTED PARTICULARS OF THE APPLICANT'S CHARGES ON THURSDAY, FEBRUARY 8TH, 1968, AND THE FACT THAT IT WOULD BE VIRTUALLY IMPOSSIBLE FOR THE BOARD TO TRANSMIT THE INTERVENER'S DEMAND FOR PARTICULARS TO THE APPLICANT IN BRANTFORD IN ORDER TO AFFORD THE APPLICANT THE NECESSARY TIME TO PROVIDE PARTICULARS TO THE INTERVENER PRIOR TO THE HEARING WHICH IS SCHEDULED FOR MONDAY, FEBRUARY 12TH, AND IN VIEW OF THE FACT THAT ANY DELAY IN THIS MATTER CANNOT ADVERSELY AFFECT THE INTERVENER IN THESE PROCEEDINGS SINCE ITS APPLICATION FOR CERTIFICATION HAS ALREADY BEEN DISMISSED, THE BOARD THEREFORE FINDS IT WILL BE NECESSARY TO ADJOURN THE HEARING SCHEDULED FOR FEBRUARY 12TH, 1968 IN THIS MATTER. IN ARRIVING AT ITS DECISION, THE BOARD HAS HAD REGARD FOR THE FACT THAT BOTH THE APPLICANT AND THE RESPONDENT HAVE CONSENTED TO THE ADJOURNMENT OF THIS MATTER AND HAS HAD FURTHER REGARD FOR THE FACT THAT THE APPLICANT PROPOSES TO CALL A LARGE

NUMBER OF WITNESSES AND THE RESPONDENT HAS AGREED TO THE HOLDING OF THE HEARING IN BRANTFORD. THE BOARD THEREFORE DIRECTS THAT THE REGISTRAR CANCEL THE HEARING SCHEDULED FOR MONDAY, FEBRUARY 12TH, AND LIST THIS MATTER FOR CONTINUATION OF HEARING AT BRANTFORD FOR THE PURPOSE OF INQUIRING INTO THE ALLEGATIONS MADE BY THE APPLICANT WITH RESPECT TO THE TAKING OF THE REPRESENTATION VOTE IN THIS MATTER.

7. HAVING REGARD TO THE FACT THAT BOTH THE RESPONDENT AND THE INTERVENER HAVE REQUESTED THE APPLICANT TO FILE PARTICULARS OF ITS ALLEGATIONS PURSUANT TO THE PROVISIONS OF SECTION 47 OF THE BOARD'S RULES OF PROCEDURE, AND HAVING REGARD TO THE FACT THAT THE APPLICANT HAS AGREED TO FILE PARTICULARS AS REQUESTED, THE BOARD DIRECTS THE APPLICANT TO FILE SUCH PARTICULARS FORTHWITH.

13918-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CAMPBELL SOUP COMPANY LTD. (RESPONDENT)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: A. BEKERMANN AND R. LIVINGSTONE FOR THE APPLICANT, B. H. STEWART AND T. A. BROWN FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 23, 1968.

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2. THE APPLICANT APPLIED ON NOVEMBER 20TH, 1967 TO BE CERTIFIED FOR A UNIT OF EMPLOYEES OF THE RESPONDENT COMPRISED OF "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AND COMPRESSOR ROOMS IN METROPOLITAN TORONTO SAVE AND EXCEPT THE CHIEF ENGINEER" AND REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

3. THE RESPONDENT OPPOSED THE APPLICATION AND, AMONG OTHER GROUNDS, TOOK THE POSITION THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT WAS INAPPROPRIATE IN THAT IT INCLUDED PERSONS WHO WERE NOT STATIONARY ENGINEERS OR HELPERS IN THE RESPONDENT'S BOILER ROOM AND THEREFORE WERE NOT PART OF THE CRAFT UNIT USUALLY REPRESENTED BY THE APPLICANT UNION.

4. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER.

5. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED JANUARY 26TH, 1968, THE BOARD CAUSED THIS MATTER TO BE LISTED FOR HEARING TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND ALL OTHER OUTSTANDING ISSUES.

6. IT APPEARS FROM THE EXAMINER'S REPORT THAT THE RESPONDENT EMPLOYS FIVE PERSONS CLASSIFIED AS STATIONARY ENGINEERS AND ONE PERSON WHO IS PRI-

MARILY ENGAGED AS THEIR HELPER IN THE BOILER ROOM OF THE RESPONDENT. IN ADDITION TO THESE SIX PERSONS, THE RESPONDENT ALSO EMPLOYS FIVE OTHER PERSONS WHO ARE LICENSED AS STATIONARY ENGINEERS AND WHO ARE CLASSIFIED AS "HOUSE ENGINEERS". THE HOUSE ENGINEERS ARE EMPLOYED IN THE RESPONDENT'S MAINTENANCE AND REFRIGERATION DEPARTMENT WHERE THEY SPEND PART OF THEIR TIME OPERATING COMPRESSORS AND IN ADDITION PERFORM MAINTENANCE WORK IN CONJUNCTION WITH OTHER MAINTENANCE TRADES INCLUDING MAINTENANCE ELECTRICIANS AND MAINTENANCE MECHANICS.

7. THE BOILER ROOM ENGINEERS AND THE HOUSE ENGINEERS HAVE COMMON SUPERVISION IN THAT THE SUPERINTENDENT OF EQUIPMENT IS RESPONSIBLE FOR THE HOUSE ENGINEERS AND HE ALSO HOLDS THE CERTIFICATE UNDER WHICH THE BOILER ROOM IS LICENSED. HOWEVER, THE HOUSE ENGINEERS ARE EMPLOYED IN A BUILDING SEPARATE FROM THE POWER HOUSE AND THERE IS NO INTERCHANGE OR TRANSFER OF STAFF BETWEEN THE POWER HOUSE EMPLOYEES AND THE HOUSE ENGINEERS.

8. THE APPLICANT TOOK THE POSITION THAT SINCE ALL THE STATIONARY ENGINEERS, INCLUDING BOTH THE HOUSE ENGINEERS AND THE BOILER ROOM ENGINEERS, WERE LICENSED UNDER THE OPERATING ENGINEERS ACT, THEY WERE PERSONS WHOM THE APPLICANT IS ENTITLED TO REPRESENT. THE APPLICANT ARGUED THAT IT WAS MERELY AN ACCIDENT THAT THEY WERE PHYSICALLY SEPARATED AND THE BOARD SHOULD INCLUDE IN THE CRAFT DESCRIPTION OF UNITS OF STATIONARY ENGINEERS THOSE STATIONARY ENGINEERS WHO OPERATE COMPRESSORS. THE APPLICANT REFERRED THE BOARD TO SEVEN CASES IN WHICH THE APPLICANT CLAIMED THE BOARD HAD CERTIFIED THE APPLICANT FOR UNITS SIMILAR TO THAT NOW PROPOSED BY THE APPLICANT. AT THE INVITATION OF THE APPLICANT, THE BOARD HAS INVESTIGATED THE FILES TO WHICH THE APPLICANT REFERRED AND HAS ASCERTAINED THAT THE BOARD IN FACT HAS CERTIFIED THE APPLICANT FOR UNITS SIMILAR TO THE UNIT PROPOSED IN THIS CASE. HOWEVER, IN EACH OF THE CASES WHERE THE BOARD HAS CERTIFIED THE APPLICANT UNION FOR A UNIT DESCRIBED IN TERMS SIMILAR TO THAT PROPOSED IN THIS CASE, BOTH THE APPLICANT AND THE RESPONDENT HAD SPECIFICALLY AGREED TO THAT DESCRIPTION. WHILE THE FACT OF THE AGREEMENT WAS NOT RECORDED IN THE ENDORSEMENT WHEREIN THE APPLICANT WAS CERTIFIED IN TWO OR THREE INSTANCES, AN INVESTIGATION OF THOSE FILES TO WHICH THE BOARD WAS REFERRED CLEARLY INDICATES THAT THE RESPONDENT AND THE APPLICANT HAD AGREED TO THE DESCRIPTION WHICH WAS ADOPTED BY THE BOARD. SIX OF THE SEVEN CASES REFERRED TO BY THE APPLICANT WERE CASES HEARD BY THE BOARD DURING THE YEAR 1961 OR EARLIER. THE SEVENTH CASE WAS A CASE HEARD BY THE BOARD IN THE YEAR 1967. COUNSEL FOR THE RESPONDENT IN THE INSTANT CASE APPEARED AS COUNSEL FOR THE COMPANY IN THE 1967 CASE AND HE CONFIRMED THE FACT, TO WHICH THE APPLICANT AGREED, THAT THE UNIT IN THAT INSTANCE COVERED PERSONS OUTSIDE OF THE BOILER ROOM ON THE AGREEMENT OF THE PARTIES BECAUSE OF THE PECULIAR CIRCUMSTANCES OF THE CASE.

9. ON THE 19TH OF MAY, 1964, THE BOARD ISSUED A POLICY STATEMENT WITH RESPECT TO THE CRAFT UNIT OF STATIONARY ENGINEERS. THIS STATEMENT READS AS FOLLOWS:

DESCRIPTION OF BARGAINING UNIT IN POWER HOUSES
AND BOILER ROOMS

THE STANDARD CRAFT UNIT OF EMPLOYEES IN A POWER HOUSE OR BOILER ROOM IS AS FOLLOWS:

ALL STATIONARY ENGINEERS AND PERSONS
PRIMARILY ENGAGED AS THEIR HELPERS
EMPLOYED IN THE POWER HOUSE [BOILER ROOM]
OF THE RESPONDENT AT ITS PLANT [PLANTS] IN ...

THE TWO UNIONS THAT HAVE APPLIED FOR CERTIFICATION FOR CRAFT UNITS OF EMPLOYEES IN POWER HOUSES AND BOILER ROOMS IN THE LAST TWO YEARS HAVE BEEN THE INTERNATIONAL UNION OF OPERATING ENGINEERS AND THE CANADIAN UNION OF OPERATING ENGINEERS. THE STANDARD UNIT DEFINED ABOVE IS BASED ON THE BOARD'S EXPERIENCE WITH THESE TWO UNIONS. THE DESCRIPTION OF THE APPROPRIATE AREA AND MANAGERIAL EXCLUSIONS WILL DEPEND ON THE CIRCUMSTANCES OF EACH CASE.

10. SECTION 6(2) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

ANY GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR WHO ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES AND COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT SHALL BE DEEMED BY THE BOARD TO BE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS OR CRAFT, AND THE BOARD MAY INCLUDE IN SUCH UNIT PERSONS WHO ACCORDING TO ESTABLISHED TRADE UNION PRACTICE ARE COMMONLY ASSOCIATED IN THEIR WORK AND BARGAINING WITH SUCH GROUP, BUT THE BOARD SHALL NOT BE REQUIRED TO APPLY THIS SUBSECTION WHERE THE GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE.

11. WHILE IT CAN BE SAID THAT THE PERSONS FOR WHOM THE APPLICANT SEEKS TO BE CERTIFIED "EXERCISE TECHNICAL SKILLS" AND WHILE THEY MAY BE MEMBERS OF "A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM THE OTHER EMPLOYEES", THE REAL QUESTION TO BE ANSWERED IN THIS CASE IS WHETHER THE BOILER ROOM ENGINEERS AND THE HOUSE ENGINEERS ON THE FACTS OF THIS CASE CAN BE SAID TO BE A GROUP OF EMPLOYEES WHO "COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILLS OR CRAFT."

12. THE EVIDENCE ADDUCED BY THE APPLICANT WOULD INDICATE THAT IN SIX OF THE SEVEN CASES TO WHICH THE APPLICANT REFERRED, THE UNITS FOR WHICH THE APPLICANT WAS CERTIFIED INCLUDED STATIONARY ENGINEERS WHO PERFORMED WORK OUTSIDE OF THE BOILER ROOM. ALL BUT ONE OF THESE CASES WAS DATED IN 1961 OR EARLIER AND IN EACH AND EVERY CASE THE COMPANY AGREED TO THE DESCRIPTION WHICH WAS PROPOSED BY THE UNION. THE BOARD IS OF THE VIEW THAT WHILE THE APPLICANT HAS SUCCEEDED IN ESTABLISHING SIX INSTANCES WHERE THE APPLICANT BARGAINS FOR EMPLOYEES IN A UNIT DESCRIBED IN TERMS SIMILAR TO THAT PROPOSED IN THIS CASE THAT SUCH ISOLATED INSTANCES DO NOT ESTABLISH A "COMMON" PRACTICE ESPECIALLY IN VIEW OF THE POLICY STATEMENT REFERRED TO ABOVE.

13. THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS FAILED TO ESTABLISH THAT THE ENGINEERS EMPLOYED BY THE RESPONDENT IN THE COMPRESSOR ROOMS, WHOM THE RESPONDENT DESCRIBED AS HOUSE ENGINEERS, ARE NOT PART OF THE APPLICANT'S REGULAR CRAFT UNIT. IN VIEW OF THE FACT THAT THERE IS NO INTERCHANGE BETWEEN THE BOILER ROOM ENGINEERS AND THE HOUSE ENGINEERS AND THEY WORK SEPARATE AND APART FROM ONE ANOTHER PERFORMING DIFFERENT FUNCTIONS, EVEN THOUGH TRAINED IN SIMILAR SKILLS, THE BOARD FINDS THAT THERE IS NO FUNCTIONAL COHERENCE AND INTERDEPENDENCE BETWEEN THE BOILER ROOM ENGINEERS AND THE HOUSE ENGINEERS ON THE FACTS OF THIS CASE. THE BOARD THEREFORE FINDS THAT THE UNIT PROPOSED BY THE APPLICANT IS NOT AN APPROPRIATE UNIT WITHIN THE MEANING OF SECTION 6(1) OF THE LABOUR RELATIONS ACT.

14. THE FACT THAT BOTH GROUPS OF ENGINEERS ARE LICENSED UNDER THE OPERATING ENGINEERS ACT DOES NOT, OF ITSELF, CREATE A RIGHT FOR THE APPLICANT TO REPRESENT SUCH PEOPLE. IN ORDER TO BE ENTITLED TO REPRESENT A CRAFT BARGAINING UNIT OF EMPLOYEES ALL THE CRITERIA SET FORTH IN SECTION 6(2) MUST BE SATISFIED. IF THE SAME GROUP OF EMPLOYEES COLLECTIVELY AND INDIVIDUALLY PERFORMED THE FUNCTION OF STATIONARY ENGINEERS IN THE BOILER ROOM AND IN ADDITION OPERATED COMPRESSORS, AS APPEARS TO BE THE SITUATION IN SOME OF THE CASES REFERRED TO BY THE APPLICANT, A DIFFERENT RESULT MIGHT FOLLOW IN THAT THEY MIGHT FORM AN APPROPRIATE BARGAINING UNIT. WHERE, HOWEVER, ONE GROUP OF EMPLOYEES IS CONFINED TO THE BOILER ROOM AND ANOTHER GROUP IS CONFINED TO THE COMPRESSOR ROOMS AND MAINTENANCE DEPARTMENT, AS IN THIS CASE, THERE IS NO EVIDENCE WHICH ESTABLISHES THAT THE TWO GROUPS CAN BE DESCRIBED AS COMMONLY BARGAINING SEPARATE AND APART FROM THE OTHER EMPLOYEES.

15. THE BOARD THEREFORE FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

16. THE RESPONDENT POINTED OUT THAT THE APPLICANT HAD PREVIOUSLY APPLIED FOR A SIMILAR UNIT OF EMPLOYEES OF THE RESPONDENT AND, FOLLOWING ALLEGATIONS OF IMPROPER CONDUCT MADE BY THE RESPONDENT, THE APPLICANT REQUESTED LEAVE TO WITHDRAW ITS APPLICATION AND THE BOARD FOLLOWING ITS USUAL PRACTICE DISMISSED THE APPLICATION ON NOVEMBER 16TH, 1967.

17. THE RESPONDENT ARGUED THAT IN VIEW OF THE FACT THAT THERE WERE ONLY FOUR DAYS BETWEEN THE DISMISSAL OF THE EARLIER APPLICATION AND THE MAKING OF THE INSTANT APPLICATION, THE APPLICANT SHOULD BE BARRED IN THIS MATTER AND THE BOARD SHOULD NOT ENTERTAIN AN APPLICATION FROM THE APPLICANT MADE SO SOON AFTER THE DISMISSAL OF THE EARLIER APPLICATION. EXCEPT IN VERY EXTENUATING CIRCUMSTANCES, THE BOARD'S PRACTICE WITH RESPECT TO THE IMPOSITION OF A BAR AGAINST AN UNSUCCESSFUL APPLICANT IS EXERCISED ONLY WHERE A REPRESENTATION VOTE IS HELD AND THE APPLICANT FAILS TO OBTAIN THE NECESSARY MAJORITY TO BE ENTITLED TO CERTIFICATION. IN SUCH A CASE, THE SUPPORT ENJOYED BY THE APPLICANT AMONG THE EMPLOYEES OF THE COMPANY WOULD BE FULLY TESTED BY A REPRESENTATION VOTE AND THE BOARD WILL NOT ENTERTAIN A NEW APPLICATION BY THE SAME APPLICANT UNTIL SUCH TIME AS THE EMPLOYEES HAVE HAD A CHANCE TO PROPERLY RECONSIDER THEIR POSITION. THE BOARD DOES NOT CONSIDER REPETITIOUS APPLICATIONS WHERE THE MEMBERSHIP EVIDENCE HAS BEEN FULLY TESTED BY A VOTE TO BE IN THE INTEREST OF SOUND LABOUR RELATIONS. HOWEVER, IN THIS CASE, THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN THE EARLIER CASE WAS NOT TESTED BY A REPRESENTATION VOTE AND IT IS NOT THE BOARD'S PRACTICE TO IMPOSE A BAR FOLLOWING THE DISMISSAL OF THE APPLICATION.

18. THE RESPONDENT ALLEGED THAT AN OFFICIAL OF THE APPLICANT HAD GAINED ENTRY INTO THE RESPONDENT'S PLANT BY MISREPRESENTATIONS AND HAD SUCCEEDED IN SIGNING SOME OF THE RESPONDENT'S EMPLOYEES AS MEMBERS WHILE IN THE PLANT. THE RESPONDENT ACKNOWLEDGED THAT ITS ALLEGATIONS OF UNFAIR CONDUCT DID NOT GO TO THE QUALITY OF THE MEMBERSHIP EVIDENCE OBTAINED BY THE APPLICANT AS A RESULT OF ITS UNLAWFUL ENTRY INTO THE PLANT. HOWEVER, THE RESPONDENT ARGUED THAT THE APPLICANT SHOULD NOT BENEFIT FROM ITS OWN WRONGDOING AND SHOULD THEREFORE BE BARRED FROM APPLYING AT THIS TIME. ASSUMING THAT THE ALLEGATIONS MADE BY THE RESPONDENT WITH RESPECT TO THE UNLAWFUL ENTRY INTO THE PLANT OF ONE OF THE APPLICANT'S OFFICIALS WAS FOR THE PURPOSE OF SIGNING MEMBERSHIP EVIDENCE, THE BOARD IS UNABLE TO GRANT THE REMEDY REQUESTED BY THE RESPONDENT IN THIS CASE. SINCE THE APPLICANT'S WRONGDOING DID NOT AFFECT THE QUALITY OF THE MEMBERSHIP EVIDENCE SUBMITTED BY IT AND SINCE THE BOARD HAS NO PUNITIVE POWERS UNDER THE ACT, THE BOARD HAS NO JURISDICTION TO DEAL WITH THE MATTER OF TRESPASS ALTHOUGH A REMEDY MAY LIE ELSEWHERE.

19. IN VIEW OF THE ELAPSED TIME BETWEEN THE TIME THE APPLICATION WAS MADE AND THE HEARING IN THIS MATTER, THE BOARD DENIES THE APPLICANT'S REQUEST FOR A PRE-HEARING REPRESENTATION VOTE AND DIRECTS THAT A REPRESENTATION VOTE BE TAKEN IN THIS MATTER.

20. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 28TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

21. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

22. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

23. THE MATTER IS REFERRED TO THE REGISTRAR.

13701-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: A. BEKERMANN AND C. HARE FOR THE APPLICANT, J. B. DAVIS, L. R. FLEMMING AND R. F. BURGESS FOR THE RESPONDENT, NO ONE FOR THE INTERVENER.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER J. E. C. ROBINSON: FEBRUARY 14, 1968.

1. THE APPLICANT HAS APPLIED TO BE CERTIFIED FOR A BARGAINING UNIT CONSISTING OF "ALL CHIEF PLANT OPERATORS" EMPLOYED BY THE RESPONDENT IN ITS WATER WORKS DEPARTMENT.

2. THE RESPONDENT OPPOSED THE APPLICATION ON FOUR GROUNDS, HOWEVER, IT IS ONLY WITH RESPECT TO THE FIRST GROUND OF OPPOSITION THAT WE ARE HERE CONCERNED. IT WAS THE RESPONDENT'S POSITION "THAT THE BOARD HAS NO JURISDICTION TO CERTIFY THE APPLICANT AS THE BARGAINING AGENT FOR THE EMPLOYEES IN THE UNIT DESCRIBED BY THE APPLICANT BECAUSE SUCH EMPLOYEES ARE NOT EMPLOYEES UNDER THE LABOUR RELATIONS ACT IN THAT THEY EXERCISE MANAGERIAL FUNCTIONS AS DETERMINED BY THE BOARD BY ITS DECISION DATED DECEMBER 18TH, 1962, MADE ON FILE NO. 2438-61-R." IN BOARD FILE NO. 2438-61-R, ON AN APPLICATION FOR CERTIFICATION BY THE NATIONAL UNION OF PUBLIC EMPLOYEES, THE BOARD DETERMINED THAT THE PERSONS OCCUPYING THE POSITIONS OF CHIEF PLANT OPERATORS IN THE RESPONDENT'S WATER WORKS DEPARTMENT EXERCISED MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND WERE NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT DETERMINED BY THE BOARD TO BE APPROPRIATE.

3. IT WAS THE APPLICANT'S POSITION IN THE INSTANT CASE THAT THE DUTIES AND RESPONSIBILITIES OF THE CHIEF PLANT OPERATORS HAD CHANGED AND THEY ARGUED THAT THE CHIEF PLANT OPERATORS HAD LOST THEIR STATUS AS PERSONS EXERCISING MANAGERIAL FUNCTIONS AND WERE NOW EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE ACT.

4. THE DIVISION OF THE BOARD WHICH DETERMINED THE STATUS OF CHIEF PLANT OPERATORS IN THE EARLIER CASE WAS DIFFERENTLY CONSTITUTED THAN THE DIVISION OF THE BOARD IN THE INSTANT CASE. AT THE FIRST HEARING, THE PARTIES WERE ADVISED THAT ONE DIVISION OF THE BOARD HAS NO APPELLATE JURISDICTION OVER ANOTHER DIVISION AND THEREFORE WE HAD NO JURISDICTION TO REVIEW THE EARLIER DECISION WITH RESPECT TO CHIEF PLANT OPERATORS. THE PARTIES WERE THEREFORE ADVISED AT THE HEARING THAT THE APPLICANT MUST ESTABLISH THAT THERE HAS BEEN SUCH A SUBSTANTIAL CHANGE IN THE DUTIES AND RESPONSIBILITIES OF THE CHIEF PLANT OPERATORS SINCE THE DATE OF THE BOARD'S EARLIER DETERMINATION SO THAT THE EARLIER DETERMINATION COULD BE SAID TO BE NO LONGER APPLICABLE.
5. THE BOARD ON OCTOBER 24TH, 1967 THEREFORE APPOINTED AN EXAMINER "TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF PERSONS CLASSIFIED BY THE RESPONDENT AS CHIEF PLANT OPERATORS EMPLOYED IN THE WATER WORKS DEPARTMENT OF THE RESPONDENT AND, IN PARTICULAR, TO INQUIRE INTO THE EXTENT OF CHANGE, IF ANY, IN THE DUTIES AND RESPONSIBILITIES OF SUCH PERSONS WHICH HAVE OCCURRED SUBSEQUENT TO THE 14TH DAY OF MAY, 1962", WHICH DATE WAS THE DATE OF THE EXAMINER'S REPORT IN THE EARLIER CASE.
6. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER IN THIS MATTER, THE BOARD FINDS THAT BECAUSE CERTAIN EQUIPMENT IN THE WATER WORKS DEPARTMENT HAD BEEN AUTOMATED SINCE 1962, THE RESPONDENT WAS ABLE TO REDUCE ITS STAFF IN ITS WATER PUMPING STATIONS ON EACH SHIFT BY ONE OR TWO PERSONS. THE CHIEF PLANT OPERATORS HAVE BEEN GIVEN THE DUTIES OF OPERATING THE AUTOMATED EQUIPMENT AND WHILE IT WAS AGREED THAT THE CHECKING OF GAUGES, OPERATION OF SWITCHES AND TURNING OF VALVES, AS REQUIRED, WAS NOT MANUAL LABOUR, SUCH ADDITIONAL DUTIES COULD BE DESCRIBED AS "BARGAINING UNIT WORK".
7. THE CHIEF PLANT OPERATORS AGREED THAT THERE HAS BEEN NO REDUCTION IN THEIR AUTHORITY SINCE THE EARLIER DETERMINATION AND APART FROM THE ADDITIONAL DUTIES SUMMARIZED ABOVE, THEIR DUTIES AND RESPONSIBILITIES HAVE NOT CHANGED.
8. WHILE THE EXAMINER'S REPORT ESTABLISHED THAT ADDITIONAL DUTIES ARE NOW BEING PERFORMED BY THE CHIEF PLANT OPERATORS, THERE WAS NO EVIDENCE TO ESTABLISH WHETHER THE PROPORTION OF THE BARGAINING UNIT WORK NOW PERFORMED OUTWEIGHS THE MANAGERIAL FUNCTIONS OF THE CHIEF PLANT OPERATORS.
9. SINCE THERE HAS BEEN NO SIGNIFICANT CHANGE IN THE MANAGERIAL FUNCTIONS PERFORMED BY THE CHIEF PLANT OPERATORS SINCE THE EARLIER DECISION, THE BOARD THEREFORE FINDS THAT THE APPLICANT HAS FAILED TO ESTABLISH THAT THERE HAS BEEN A SUBSTANTIAL CHANGE IN THE DUTIES AND RESPONSIBILITIES OF THE PERSONS CLASSIFIED AS CHIEF PLANT OPERATORS.
10. THE BOARD ACCORDINGLY FINDS THAT THE DECISION OF THE BOARD WITH RESPECT TO CHIEF PLANT OPERATORS DATED DECEMBER 18TH, 1962, BOARD FILE 2438-61-R, SHOULD NOT BE ALTERED AT THIS TIME.

11. SINCE THE PERSONS COMPRISING THE BARGAINING UNIT PROPOSED BY THE APPLICANT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, THE BOARD HAS NO JURISDICTION TO CERTIFY THE APPLICANT FOR THAT BARGAINING UNIT.

12. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: FEBRUARY 14, 1968.

I DISSENT. I FIND CHIEF PLANT OPERATORS ARE EMPLOYEES FOR THE PURPOSE OF THE ONTARIO LABOUR RELATIONS ACT, AS A RESULT OF DUTIES CHANGED SINCE THE TIME OF THE EXAMINER'S REPORT REFERRED TO IN THE BOARD'S DECISION OF DECEMBER 18, 1962, THAT DEALT WITH THIS SAME QUESTION.

I WOULD THEREFORE HAVE CERTIFIED THE UNION TO BARGAIN FOR "ALL CHIEF PLANT OPERATORS EMPLOYED BY THE RESPONDENT IN ITS WATER WORKS DEPARTMENT."

13958-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772
(APPLICANT) v. THE NIAGARA WIRE WEAVING COMPANY, LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT HEARING: FRED G. GRIGSBY FOR THE APPLICANT, BRUCE H. STEWART, A.V. SNEATH FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 20, 1968.

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2. THE BOARD FURTHER FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT ITS PLANT IN NIAGARA FALLS, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. BY ITS DECISION DATED DECEMBER 20TH, 1967, MR. J.R. HENDERSON, EXAMINER, WAS APPOINTED BY THE BOARD TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. AT THE REQUEST OF THE APPLICANT, A HEARING WITH RESPECT TO THE REPORT OF THE EXAMINER DATED JANUARY 10TH, 1968, WAS HELD ON FEBRUARY 1ST, 1968.

4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD DECLARES THAT R. STEWART WAS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE.

5. THE REMAINING QUESTION FOR THE BOARD TO DETERMINE IN THIS MATTER IS WHETHER CLEMENTE IANIERO WAS AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT AT THE MATERIAL TIME. HIS EVIDENCE CONTAINED IN THE EXAMINER'S REPORT IS CONTRADICTORY IN PART AND THERE APPEARS TO BE SOME CONFUSION WITH RESPECT TO HIS EMPLOYMENT IN THE BARGAINING UNIT. BRIEFLY, THE SIGNIFICANT PARTS OF THE EVIDENCE IN THIS MATTER ARE THAT PRIOR TO NOVEMBER 27TH, 1967 IANIERO WORKED IN THE RESPONDENT'S PLANT AS A LABOURER AND WAS THEN COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE UNITED STEELWORKERS OF AMERICA AND THE RESPONDENT. THIS AGREEMENT EXCLUDES AMONG OTHERS, STATIONARY ENGINEERS, FIREMEN AND WATCHMEN. ON NOVEMBER 27TH THE RESPONDENT'S EVIDENCE INDICATES THAT IANIERO WAS TRANSFERRED FROM THE PLANT UNIT TO THE BOILER ROOM, RECLASSIFIED TO A FIREMAN/WATCHMAN TRAINEE AND REMOVED FROM THE BARGAINING UNIT REPRESENTED BY THE UNITED STEELWORKERS OF AMERICA. AT THE SAME TIME HIS WAGE RATE WAS INCREASED AND ACCORDING TO THE RESPONDENT'S PAYMASTER PUT INTO IMMEDIATE EFFECT WHICH WAS REFLECTED IN HIS PAY FOR THE WEEK ENDING DECEMBER 1ST. IANIERO CONFIRMED THIS IN HIS TESTIMONY AND AGREED THAT HIS JOB CHANGED BETWEEN NOVEMBER 26TH AND DECEMBER 1ST. UNION DUES WERE NOT DEDUCTED FROM HIS PAY FOR THE WEEK ENDING DECEMBER 1ST. MR. DESSON TESTIFIED THAT IANIERO WORKED IN THE BOILER ROOM ON NOVEMBER 27TH AND ALTHOUGH THERE IS SOME DOUBT AS TO WHERE HE WORKED IT IS CLEAR THAT HE WAS AT WORK ON DECEMBER 1ST. HE WAS ON VACATION FROM DECEMBER 4TH TO DECEMBER 11TH AND ON RETURNING WORKED IN THE BOILER ROOM.

6. HAVING REGARD TO ALL THE EVIDENCE BEFORE US AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT CLEMENTE IANIERO WAS AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE. ACCORDINGLY, THE BOARD FURTHER FINDS THAT THERE WERE 5 EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE. OF THESE 5 EMPLOYEES THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP FOR TWO.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON DECEMBER 11TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. THE APPLICATION IS ACCORDINGLY DISMISSED.

13969-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. JOHN INGLIS CO. LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

- AND -

13970-67-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. JOHN INGLIS CO. LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER) V. UNITED STEELWORKERS OF AMERICA (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER
AND R.W. TEAGLE.

APPEARANCES AT HEARING: IAN SCOTT, GERRY GRIFFIN AND BEN DES ROCHES
FOR UNITED STEELWORKERS OF AMERICA, NO ONE FOR THE RESPONDENT, FRED
G. GRIGSBY FOR INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772,
R. RUSSELL AND M. BOSNICH FOR UNITED ELECTRICAL, RADIO AND MACHINE
WORKERS OF AMERICA (UE), ROBERT WHITE, JACK PAWSON, FRANK MOROZ AND
GLEN HORSEPOOL FOR UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL
IMPLEMENT WORKERS OF AMERICA (U.A.W.).

DECISION OF THE BOARD: FEBRUARY 13, 1968.

1. IN ITS DECISION DATED DECEMBER 27TH, 1967, THE BOARD DIRECTED
THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT
AT SALT FLEET TOWNSHIP IN VOTING CONSTITUENCY #1 CONSISTING OF ALL
EMPLOYEES OF THE RESPONDENT WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.
THE EMPLOYEES WERE OFFERED A CHOICE BETWEEN UNITED STEELWORKERS OF AMERICA
AND UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) IN VOTING
CONSTITUENCY #1. THE BOARD FURTHER DIRECTED THAT A REPRESENTATION VOTE BE
TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #2 CON-
SISTING OF ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS
THEIR HELPERS AND THE EMPLOYEES IN VOTING CONSTITUENCY #2 WERE OFFERED A
CHOICE BETWEEN THE UNITED STEELWORKERS OF AMERICA AND INTERNATIONAL UNION
OF OPERATING ENGINEERS, LOCAL 772.

2. IN ADDITION TO THE THREE UNIONS REFERRED TO ABOVE, IT APPEARS
THAT THE UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA (U.A.W.) ALSO WERE ATTEMPTING TO ORGANIZE THE RESPONDENT'S
EMPLOYEES. THE U.A.W. APPARENTLY DECIDED NOT TO APPLY FOR CERTIFICATION
UNTIL SUCH TIME AS THE EMPLOYEES OF THE RESPONDENT HAD AN OPPORTUNITY TO
DECIDE WHETHER OR NOT THEY WISHED TO BE REPRESENTED BY THE STEELWORKERS
OR UE. THE U.A.W. INSTRUCTED THEIR MEMBERSHIP TO VOTE IN SUCH A MANNER
AS TO CAUSE THEIR BALLOTS TO BE SPOILED THEREBY HOPING THAT NEITHER
STEELWORKERS NOR UE WOULD OBTAIN IN EXCESS OF FIFTY PER CENT OF THE
BALLOTS CAST BY THE ELIGIBLE VOTERS AS REQUIRED BY SECTION 7(3) OF THE
LABOUR RELATIONS ACT, AND IN SUCH INSTANCES BOTH STEELWORKERS AND UE WOULD
HAVE THEIR APPLICATIONS DISMISSED. IF THE U.A.W. WERE SUCCESSFUL IN THEIR
PLAN, THE U.A.W. COULD THEN APPLY FOR CERTIFICATION WITHOUT NECESSITY OF
COMPETING WITH ANOTHER TRADE UNION IN THE EVENT THAT THE REPRESENTATION
VOTE BE TAKEN.

3. THE U.A.W. APPARENTLY ADOPTED THIS PLAN PRIOR TO DECEMBER 15TH,
1967, AND ON THAT DATE THE FOLLOWING PAMPHLET WAS DISTRIBUTED TO THE
EMPLOYEES OF THE RESPONDENT:

JOHN INGLIS EMPLOYEES

DEAR MEMBER:

OUR MEETING ON TUESDAY, DECEMBER 12TH, 1967 AT THE
PINES TAVERN WAS A HUGE SUCCESS. NOT ONLY DID WE HAVE

THIRTY-TWO EMPLOYEES (MALE & FEMALE) PRESENT, BUT WE ALSO SIGNED UP A NUMBER OF NEW MEMBERS.

AT THIS MEETING WE OUTLINED OUR POSITION QUITE CLEARLY TO OUR MEMBERS AND THE COURSE TO BE TAKEN WHICH, IN OUR OPINION IS THE ONLY SENSIBLE APPROACH TO HAVE THE U.A.W. AS YOUR BARGAINING AGENT.

WITH APPROXIMATELY 100 EMPLOYEES PRESENTLY WORKING IN THE INGLIS PLANT THE U.A.W. HAVE ENOUGH SIGNED CARDS TO MAKE AN APPLICATION. HOWEVER, IF WE WERE TO GO AHEAD THIS WOULD ONLY MAKE MATTERS WORSE WITH THREE UNIONS IN THE PICTURE, AND OBVIOUSLY NO ONE UNION WOULD GET THE APPROXIMATE 51 VOTES REQUIRED.

OUR POSITION NOW IS VERY STRAIGHT FORWARD. IN ORDER TO HAVE THE U.A.W. UNION BE YOUR BARGAINING AGENT ALL OUR MEMBERS HAVE TO DO IS NOT VOTE FOR EITHER THE U.E. OR THE STEELWORKERS WHEN THE VOTE COMES UP. WITH NEITHER OF THE OTHER TWO UNIONS GETTING THE REQUIRED 51% THE U.A.W. WOULD THEN AUTOMATICALLY BE IN A POSITION TO STEP RIGHT UP AND APPLY FOR CERTIFICATION THE DAY FOLLOWING THE VOTE. OUR MEMBERS FEEL THIS IS THE RIGHT COURSE TO FOLLOW, AND IN THIS WAY THE U.A.W. COULD BE REPRESENTING THE EMPLOYEES WITH CLEAN HANDS AND NO SPLIT IN THE PLANT.

WE WILL KEEP YOU POSTED AS TIME PROGRESSES. MEANWHILE, WE WISH TO THANK YOU FOR YOUR SPLENDID CO-OPERATION AND DEDICATION AS MEMBERS OF THE U.A.W. FROM HERE ON IT IS ONLY A MATTER OF TIME AND WE WILL STILL CONTINUE TO SIGN UP MORE EMPLOYEES WHO ARE NOW OPENLY ADMITTING OUR STRENGTH.

IN CLOSING, MAY WE TAKE THIS OPPORTUNITY TO WISH YOU ALL A MERRY CHRISTMAS AND A HEALTHY AND PROSPEROUS NEW YEAR.

FM/JP/LK
OPEIU343
12/15/67

SINCERELY,
FRANK MOROZ,
JACK PAWSON,
U.A.W. ORGANIZING COMMITTEE.

4. IN ACCORDANCE WITH THE DIRECTION OF THE BOARD, A REPRESENTATION VOTE WAS HELD IN VOTING CONSTITUENCIES #1 AND #2 AS AFORESAID ON JANUARY 18TH, 1968. PRIOR TO THE TAKING OF THE REPRESENTATION VOTE, THE REGISTRAR CAUSED A NOTICE TO BE POSTED IMPOSING A "SILENT PERIOD" ON ALL INTERESTED PERSONS. THE REGISTRAR'S DIRECTION WITH RESPECT TO THE IMPOSITION OF THE SILENT PERIOD READS AS FOLLOWS:

I DIRECT ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF SUNDAY, THE 14TH DAY OF JANUARY, 1968, UNTIL THE VOTE IS TAKEN.

5. THE U.A.W. ACKNOWLEDGED THAT FOR THE PURPOSE OF THE REGISTRAR'S DIRECTION, THE U.A.W. WAS AN "INTERESTED PERSON".

6. ON THURSDAY, JANUARY 11TH, PRIOR TO THE IMPOSITION OF THE SILENT PERIOD, THE STEELWORKERS CAUSED A PAMPHLET TO BE DISTRIBUTED AMONG THE EMPLOYEES OF THE RESPONDENT WHICH READS, IN PART, AS FOLLOWS:

AT A MEETING OF THE INGLIS EMPLOYEES' U.A.W. MEMBERS HELD LAST NIGHT AT THE U.A.W. HALL ON BAY STREET N., JACK PAWSON, U.A.W. REPRESENTATIVE, INDICATED THAT THE U.A.W. WERE NOT DIRECTING THEIR PEOPLE NOT TO VOTE BUT WERE LEAVING IT TO THEIR OWN JUDGEMENT WHETHER THEY SHOULD VOTE OR NOT.

THE U.A.W. REPRESENTATIVE WENT ON TO SAY THAT IF HE WAS ASKED WHICH UNION HE WOULD CHOOSE, BETWEEN THE U.E. AND THE STEELWORKERS, HE WOULD NOT HESITATE TO SUPPORT THE STEELWORKERS UNION OVER THE U.E..

THE EVIDENCE DISCLOSED THAT NO DIRECTION WAS GIVEN TO THE EMPLOYEES BY U.A.W. TO SUPPORT STEELWORKERS AS ALLEGED IN THE PAMPHLET.

7. THE U.A.W. CALLED A MEETING AT THE REQUEST OF AN EMPLOYEE FOR THE PURPOSE OF CLARIFYING THE SITUATION. THIS MEETING WAS ATTENDED BY THREE OR FOUR STEELWORKER SUPPORTERS OR REPRESENTATIVES AND THESE REPRESENTATIVES ATTEMPTED TO SOLICIT THE SUPPORT OF THE U.A.W. MEMBERS. THE U.A.W. OFFICIALS AT THE MEETING ADVISED THE MEMBERS THAT THEY WOULD LEAVE THE CHOICE OF THE UNION UP TO THE MEMBERS BUT THAT THEIR ORIGINAL PLAN AS SET OUT IN THE PAMPHLET OF DECEMBER 15TH, 1967 WAS STILL IN EFFECT. THE U.A.W. OFFICIALS ALSO ADVISED ITS MEMBERS AT THE MEETING THAT THE IMPOSITION OF THE SILENT PERIOD WHICH WAS TO TAKE PLACE COMMENCING AT 12:00 MIDNIGHT ON JANUARY 14TH WAS EQUALLY BINDING UPON U.A.W. SUPPORTERS AS WELL AS THE SUPPORTERS OF THE OTHER UNIONS.

8. SUBSEQUENT TO MONDAY, JANUARY 15TH, AND DURING THE SILENT PERIOD, CERTAIN EMPLOYEES ASKED OTHER EMPLOYEES WHO HAD ATTENDED THE U.A.W. MEETING WHAT HAD TRANSPIRED AT THE MEETING. THE PERSONS WHO WERE ASKED THE QUESTION ADVISED THE EMPLOYEES THAT NOTHING HAD CHANGED. THERE IS NO EVIDENCE OF ACTIVE SOLICITATION ON BEHALF OF THE U.A.W. NOR WAS THERE EVIDENCE OF ACTIVE OPPOSITION AGAINST THE STEELWORKERS OR UE BY U.A.W. SUPPORTERS DURING THE QUIET PERIOD.

9. ON THE TAKING OF THE REPRESENTATION VOTE IN VOTING CONSTITUENCY #1, THIRTY-FIVE PERSONS CAST SPOILED BALLOTS, THIRTY EMPLOYEES CAST A BALLOT IN FAVOUR OF THE STEELWORKERS AND TWENTY-SEVEN PERSONS CAST A BALLOT IN FAVOUR OF THE UE.

10. THE STEELWORKERS FILED A STATEMENT OF DESIRE TO MAKE REPRESENTATIONS WITH RESPECT TO THE TAKING OF THE REPRESENTATION VOTE AND ALLEGED THAT THE EMPLOYEES OF THE RESPONDENT WERE PREVENTED FROM FREELY DEMONSTRATING THEIR WISHES IN THE MATTER. THE STEELWORKERS REQUESTED THE BOARD TO DIRECT A NEW REPRESENTATION VOTE OR, IN THE ALTERNATIVE, TO IMPOSE A BAR UPON THE U.A.W. AS WELL AS UPON THE STEELWORKERS AND THE UE.

11. WHILE THE UE IN ARGUMENT INDICATED THAT IT WOULD WELCOME A NEW REPRESENTATION VOTE, THE UE OPPOSED THE IMPOSITION OF A BAR AGAINST THE U.A.W. AS REQUESTED BY THE STEELWORKERS SINCE IT WAS DISCLOSED THAT THE RESPONDENT HAD INDICATED A WILLINGNESS TO VOLUNTARILY RECOGNIZE THE STEELWORKERS AS THE BARGAINING AGENT FOR ITS EMPLOYEES. THE UE TOOK THE POSITION THAT THE REAL VILLAIN OF THE PIECE WAS SECTION 7(3) OF THE ACT WHICH REQUIRED A UNION TO OBTAIN IN EXCESS OF FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE RATHER THAN A SIMPLE MAJORITY AS IN THE CASE OF A MUNICIPAL, PROVINCIAL OR FEDERAL ELECTION.

12. DEALING FIRST WITH THE REQUIREMENTS OF SECTION 7(3), WHICH REQUIRE A UNION TO OBTAIN IN EXCESS OF FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE IN ORDER TO BE CERTIFIED, IT IS TO BE NOTED THAT WITHOUT SUCH A PROVISION IN A SITUATION SUCH AS THIS WHERE EMPLOYEES ARE OFFERED A CHOICE BETWEEN TWO TRADE UNIONS, THE EMPLOYEES WOULD BE FACED WITH THE SITUATION WHERE EVEN IF THE MAJORITY OF THE EMPLOYEES WERE OPPOSED TO EITHER UNION ACTING AS THEIR BARGAINING AGENT IT WOULD BE HELPLESS TO PREVENT SUCH A RESULT IF A UNION ONLY REQUIRES A SIMPLE MAJORITY OF THE BALLOTS CAST IN ORDER TO BE CERTIFIED. IN ADDITION, AS THE BOARD INDICATED AT THE HEARING THIS PROVISION PERMITS A UNION TO DO PRECISELY WHAT THE U.A.W. ATTEMPTED TO DO IN THIS CASE. IF A THIRD UNION WISHES TO BECOME BARGAINING AGENT FOR THE EMPLOYEES, RATHER THAN CREATE A SITUATION WHERE EMPLOYEES WOULD BE FORCED TO CHOOSE BETWEEN THREE UNIONS THEREBY DRASTICALLY REDUCING THE CHOICE OF ANY ONE UNION OBTAINING MORE THAN FIFTY PER CENT, SUCH THIRD UNION CAN TRY TO RETAIN ITS SUPPORT AND THEREBY PREVENT EITHER OF THE TWO APPLICANT UNIONS FROM OBTAINING A MAJORITY AS WAS DONE IN THIS CASE.

13. WHILE THE EVIDENCE IN THIS CASE DISCLOSED THAT MOST OF THE EMPLOYEES IN THE BARGAINING UNIT HAD DISCUSSIONS CONCERNING THE VOTE DURING THE SILENT PERIOD, THERE WAS NO EVIDENCE THAT SUCH DISCUSSIONS WERE AT THE INSTANCE OF THE TRADE UNION THAT THEY SUPPORTED NOR WAS THERE ANY SUGGESTION THAT THE DISCUSSIONS TOOK ON THE CHARACTER OF INTIMIDATION OR COERCION. IT WOULD BE NAIVE TO THINK THAT EMPLOYEES IN THE BARGAINING UNIT WILL NOT HAVE SOME DISCUSSION CONCERNING THE REPRESENTATION VOTE FOR A PERIOD OF THREE DAYS IMMEDIATELY PRECEDING THE TAKING OF THE VOTE. SINCE THE DISCUSSIONS IN THIS MATTER DID NOT INVOLVE INTIMIDATION, COERCION, OR SOLICITATION, AND WERE NOT AT THE BEHEST OF OFFICERS OR OFFICIALS OF ONE OF THE PARTIES, THEY CANNOT BE CONSTRUED AS "PROPAGANDA" AND "ELECTIONEERING" AS CONTEMPLATED BY THE REGISTRAR'S DIRECTION WITH RESPECT TO THE IMPOSITION OF THE QUIET PERIOD.

14. THE BOARD THEREFORE FINDS THAT THE UNITED STEELWORKERS OF AMERICA HAVE FAILED TO ESTABLISH THAT THE REPRESENTATION VOTE TAKEN IN THIS MATTER DID NOT TRULY REFLECT THE WISHES OF THE EMPLOYEES NOR DID THE STEELWORKERS ESTABLISH THAT AN INTERESTED PERSON ENGAGED IN PROPAGANDA AND ELECTIONEERING AS CONTEMPLATED BY THE REGISTRAR'S DIRECTION WITH RESPECT TO THE IMPOSITION OF THE SILENT PERIOD.

15. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN VOTING CONSTITUENCY #1 NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE UNITED STEELWORKERS OF AMERICA.

16. THE APPLICATION OF THE UNITED STEELWORKERS OF AMERICA IS THEREFORE DISMISSED.

17. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN VOTING CONSTITUENCY #1 NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE).

18. THE APPLICATION OF UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) IS THEREFORE DISMISSED.

19. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE UNITED STEELWORKERS OF AMERICA OR BY UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN VOTING CONSTITUENCY #1 WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.

20. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN VOTING CONSTITUENCY #2 MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772.

21. THE BOARD THEREFORE FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT SALT FLEET TOWNSHIP, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

22. A CERTIFICATE WILL ISSUE TO INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 WITH RESPECT TO THE BARGAINING UNIT DESCRIBED ABOVE.

23. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTES TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

14085-67-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DRUG TRADING COMPANY LIMITED (RESPONDENT) V. EMPLOYEE (OBJECTOR).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT HEARING: W. W. TILLER FOR THE APPLICANT, G.G. HURLBURT, J.E. GUTSELL AND C.O. MACEY FOR THE RESPONDENT, H. WADSWORTH FOR THE OBJECTOR.

DECISION OF THE BOARD: FEBRUARY 13, 1968.

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT SCARBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT REGISTERED PHARMACISTS ARE NOT INCLUDED IN THE BARGAINING UNIT.

4. THERE WAS FILED IN THIS MATTER A STATEMENT OF OBJECTIONS SIGNED BY TWELVE PERSONS WHO PURPORT TO BE EMPLOYEES OF THE RESPONDENT. THIS STATEMENT WAS MAILED TO THE BOARD REGISTERED MAIL ON MONDAY, FEBRUARY 5TH, 1968. THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS FRIDAY, FEBRUARY 2ND, 1968. AN EMPLOYEE OF THE RESPONDENT ATTENDED AT THE HEARING AND EXPLAINED THAT ALTHOUGH HE WENT TO THE POST OFFICE IN AN ATTEMPT TO REGISTER THE STATEMENT OF DESIRE ON FRIDAY, FEBRUARY 2ND, 1968, THE REGISTRATION WICKET AT THE POST OFFICE WAS CLOSED FOR BUSINESS ON HIS ARRIVAL. HOWEVER, THE EMPLOYEE STATED THAT HAVING THOUGHT ABOUT THE MATTER FOR THE WEEK-END, HE DECIDED TO SEND THE DOCUMENT BY REGISTERED MAIL ON MONDAY, FEBRUARY 5TH, 1968. THE EMPLOYEE DID NOT SUGGEST ANY REASON WHY THE BOARD SHOULD DEPART FROM ITS REGULAR PRACTICE BY EXTENDING THE TIME FOR FILING EVIDENCE OF OBJECTION BY THE EMPLOYEES TO THE CERTIFICATION OF THE APPLICANT BEYOND THE TERMINAL DATE FIXED FOR THIS APPLICATION.

5. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND THE REQUIREMENTS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE, AND IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE IN SIMILAR CASES, THE BOARD IS OF OPINION THAT IT SHOULD NOT DEPART FROM THE REQUIREMENTS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE AND EXTEND THE TIME FOR FILING EVIDENCE OF OBJECTION IN THE CIRCUMSTANCES OF THIS CASE. THE BOARD THEREFORE FINDS THAT SINCE THE STATEMENT OF OBJECTIONS WAS NOT FILED IN ACCORDANCE WITH THE REQUIREMENTS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE,

THE STATEMENT OF OBJECTIONS CANNOT BE ACCEPTED BY THE BOARD IN THIS CASE.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 2ND, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14100-67-R: INTERNATIONAL LABOURERS' UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. LAURENTIAN CONCRETE FORMS LIMITED (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 INTERVENER.

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: F. MANONI FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, A. LALONDE FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 19, 1968.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE COUNTY OF LANARK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

4. CARPENTERS AND CARPENTERS' APPRENTICES CLEARLY FALL WITHIN THE PURVIEW OF SECTION 6(2) OF THE LABOUR RELATIONS ACT AS THEY ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES AND THEY COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED PRACTICE PERTAINS TO THAT CRAFT. THE APPLICANT DID NOT ESTABLISH THAT IT IS A TRADE UNION THAT BY RECOGNIZED PRACTICE PERTAINS TO THAT CRAFT UNDER SECTION 6(2) OF THE ACT. THE BOARD THEREFORE FINDS THAT THE APPLICANT IS NOT ENTITLED TO CERTIFICATION FOR THE CRAFT UNIT WHICH IT IS SEEKING NOR HAS IT SATISFIED THE BOARD THAT THE UNIT IS OTHERWISE APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

14107-67-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 117 (APPLICANT) v. BELMONT PLASTERING CO. (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: A. BURIGANA FOR THE APPLICANT, F. R. VON VEH FOR THE RESPONDENT, M. LEVINSON AND A. NEIL FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 23, 1968.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL PLASTERERS' HELPERS IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA No. 8.

4. THE RESPONDENT ALLEGED THAT THERE WAS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN ITSELF AND THE APPLICANT COVERING THE EMPLOYEES WHO ARE THE SUBJECT OF THIS APPLICATION. AN UNSIGNED COPY OF THE PURPORTED AGREEMENT WAS FILED WITH THE BOARD. NO EVIDENCE WAS ADDUCED AT THE HEARING THAT THE AGREEMENT WAS EXECUTED BY THE PARTIES AND THE REPRESENTATIONS THAT WERE MADE WITH RESPECT TO THE AGREEMENT CLEARLY INDICATED THAT ITS TERMS AND CONDITIONS HAVE NOT BEEN APPLIED TO THE PLASTERERS' HELPERS IN THE EMPLOY OF THE RESPONDENT. DESPITE THE FACT THAT LOCAL 117 IS THE APPLICANT IN THE INSTANT CASE, IT ALSO ALLEGED THAT IT ALREADY HOLDS THE BARGAINING RIGHTS FOR THE EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION BY VIRTUE OF ANOTHER PURPORTED COLLECTIVE AGREEMENT DATED DECEMBER 15TH, 1967, WHICH WAS FILED WITH THE BOARD. ALTHOUGH THIS AGREEMENT WAS EXECUTED, THE APPLICANT ADVISED THE BOARD THAT AT THE TIME THE AGREEMENT WAS ENTERED INTO BY THE PARTIES THE APPLICANT DID NOT REPRESENT ANY OF THE PLASTERERS' HELPERS WHO ARE PURPORTED TO BE COVERED BY THE AGREEMENT. IN THESE CIRCUMSTANCES, THE BOARD RULED AT THE HEARING THAT NEITHER OF THE TWO DOCUMENTS FILED WITH THE BOARD CONSTITUTED A BAR TO THE INSTANT APPLICATION.

5. THE APPLICANT AT THE HEARING ADVANCED NO EVIDENCE OR ARGUMENT THAT PLASTERERS' HELPERS EITHER CONSTITUTED AN APPROPRIATE CRAFT UNIT OR THAT IT IS A TRADE UNION THAT ACCORDING TO ESTABLISHED PRACTICE PERTAINED TO SUCH A CRAFT WITHIN THE MEANING OF SECTION 6(2) OF THE ACT. FURTHER, THE APPLICANT MADE NO SUBMISSIONS THAT THE UNIT FOR WHICH IT WAS APPLYING WAS OTHERWISE APPROPRIATE FOR COLLECTIVE BARGAINING PURSUANT TO SECTION 6(1) OF THE ACT. COUNSEL FOR THE INTERVENER ADVISED THE BOARD THAT IF IT WAS THE INTENTION OF THE APPLICANT TO RELY UPON ITS CONSTITUTION AS A BASIS FOR TAKING PLASTERERS' HELPERS INTO MEMBERSHIP, HE WISHED TO MAKE REPRESENTATIONS WITH RESPECT TO ANY SUCH ARGUMENT. THE APPLICANT, HOWEVER, NEITHER FILED ITS CONSTITUTION NOR ATTEMPTED TO PLACE ANY RELIANCE UPON IT.

6. IN THESE CIRCUMSTANCES, THE BOARD HAS NO ALTERNATIVE BUT TO FIND THAT THE APPLICANT HAS NOT ESTABLISHED EITHER THAT THE UNIT OF EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION IS APPROPRIATE FOR COLLECTIVE BARGAINING OR THAT IT IS ENTITLED TO REPRESENT SUCH A UNIT IN COLLECTIVE BARGAINING.

7. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

14055-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. TORONTO PLASTERING COMPANY LIMITED (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117, (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: MARTIN LEVINSON AND T. NEAL FOR THE APPLICANT, ARNOLD SOMERS FOR THE RESPONDENT, NO ONE FOR THE INTERVENER.

DECISION OF THE BOARD: FEBRUARY 14, 1968.

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4. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA No. 8.

5. THE RESPONDENT AND THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 ENTERED INTO A COLLECTIVE AGREEMENT ON DECEMBER 18TH, 1967 WHICH IS TO REMAIN IN EFFECT UNTIL DECEMBER 18TH, 1968. BY THE SCOPE CLAUSE OF THE AGREEMENT THE RESPONDENT RECOGNIZES LOCAL 117 AS THE EXCLUSIVE BARGAINING AGENT FOR ALL OF ITS EMPLOYEES SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK. THE RESPONDENT ALLEGES THAT ITS AGREEMENT WITH THE PLASTERERS COVERS THOSE OF ITS EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION.

6. THE COLLECTIVE AGREEMENT PROVIDES FOR THE PAYMENT OF A WAGE RATE OF \$3.75 PER HOUR. THIS RATE IS PAID TO THE PLASTERERS EMPLOYED BY THE RESPONDENT. THE LABOURERS IN THE EMPLOY OF THE RESPONDENT, HOWEVER, ARE PAID A WAGE RATE OF \$2.60 PER HOUR AND THEY RECEIVE NO OVERTIME PAY AS PROVIDED BY THE AGREEMENT. BY THE AGREEMENT THE RESPONDENT UNDERTAKES TO EMPLOY ONLY MEMBERS IN GOOD STANDING OF THE INTERVENER. NONE OF THE LABOURERS EMPLOYED BY THE RESPONDENT ARE MEMBERS OF THE INTERVENER. THE AGREEMENT PROVIDES THAT THE RESPONDENT WILL REMIT TO WILLIAM M. MERCER COMPANY LIMITED, IN TRUST, 16¢ PER HOUR FOR EACH HOUR WORKED BY ALL JOURNEYMEN AND APPRENTICE PLASTERERS. THIS AMOUNT IS COMPOSED OF AN 8¢ EMPLOYEE WELFARE FUND CONTRIBUTION, A 3¢ CHECK-OFF OF UNION DUES, AND A 5¢ SUPPLEMENTARY UNEMPLOYMENT BENEFIT FUND CONTRIBUTION. WE NOTE THAT THE ABOVE CHECK-OFF OF 16¢ REFERS ONLY TO PLASTERERS AND THEIR APPRENTICES. MOREOVER, THE LIST OF EMPLOYEES PROVIDED BY THE RESPONDENT TO WILLIAM M. MERCER COMPANY LIMITED DOES NOT CONTAIN THE NAMES OF ANY OF THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. FINALLY, THE RESPONDENT HAS MADE NO DEDUCTIONS FROM THE WAGES OF THE LABOURERS IN ITS EMPLOY AND NONE OF THEM ARE ELIGIBLE TO RECEIVE BENEFITS FROM THE WELFARE FUND.

7. ON ITS FACE, THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER WOULD APPEAR TO COVER THOSE EMPLOYEES OF THE RESPONDENT WHO ARE THE SUBJECT OF THIS APPLICATION. THE FACT IS, HOWEVER, THAT THE TERMS AND CONDITIONS OF THE AGREEMENT HAVE NOT BEEN APPLIED TO THEM. IT IS APPARENT FROM THE EVIDENCE THAT THE PARTIES NEVER INTENDED THE AGREEMENT TO COVER THE LABOURERS EMPLOYED BY THE RESPONDENT. IN THESE CIRCUMSTANCES, WE FIND THAT THE COLLECTIVE AGREEMENT IS NOT A BAR TO THE INSTANT APPLICATION.

8. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 24TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14133-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) v. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) v. THE COUNCIL OF NORTHERN ELECTRIC ENGINEERING TECHNICIANS, TORONTO WORKS (INTERVENER #1) v. THE ONTARIO COUNCIL OF NORTHERN ELECTRIC ENGINEERS AND ASSOCIATES (INTERVENER #2).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 29, 1968.

1. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN WHEREIN THE APPLICANT SEEKS TO DISPLACE NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION AS BARGAINING AGENT FOR THE EMPLOYEES PRESENTLY REPRESENTED BY NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION.

2. THE INTERVENER #1 HAS INTERVENED IN THE APPLICANT'S APPLICATION FOR A PRE-HEARING VOTE AND SEEKS TO BE CERTIFIED FOR A PORTION OF THE BARGAINING UNIT FOR WHICH THE APPLICANT HAS APPLIED TO BE CERTIFIED. HOWEVER, INTERVENER #1 DOES NOT REQUEST THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. SINCE INTERVENER #1 HAS APPLIED TO BE CERTIFIED BY WAY OF INTERVENTION IN A PRE-HEARING REPRESENTATION VOTE APPLICATION AND SINCE THERE IS NO VALID REASON FOR REFUSING THE APPLICANT'S REQUEST THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN IN THIS MATTER, THE BOARD FINDS NO REASON TO REFUSE THE APPLICANT'S REQUEST THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

3. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

4. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS MANUFACTURING DIVISION IN THE COUNTY OF PEEL, SAVE AND EXCEPT SECTION CHIEFS, PERSONS ABOVE THE RANK OF SECTION CHIEF, ENGINEERS, MEMBERS OF THE PERSONNEL DEPARTMENT, NURSES, ONE SECRETARY TO THE WORKS MANAGER, AND ONE SECRETARY TO EACH PERSON REPORTING DIRECTLY TO THE WORKS MANAGER.

5. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE GEOGRAPHIC AREA OF THE VOTING CONSTITUENCY INCLUDES THE RESPONDENT'S PLANTS AT BRAMALEA, COOKSVILLE AND ORENDA ROAD.

6. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 16TH DAY OF FEBRUARY, 1968 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 16TH DAY OF FEBRUARY, 1968 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

7. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION.

8. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE IN THIS MATTER, THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR HEARING TO AFFORD INTERVENER #1 AN OPPORTUNITY TO ESTABLISH ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT, AND TO INQUIRE WHETHER THE UNIT PROPOSED BY THE INTERVENER #1 WHICH READS "ALL ENGINEERING TECHNICIANS EMPLOYED BY THE RESPONDENT IN THE COUNTY OF PEEL

EXCLUDING SUPERVISORS AND ALL OTHER PERSONS ABOVE THE RANK OF SUPERVISORS" CONSTITUTES A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, AND ALL OTHER OUTSTANDING ISSUES.

9. IF INTERVENER #1 SUCCEEDS IN ESTABLISHING THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT AND FURTHER SATISFIES THE BOARD THAT THE UNIT PROPOSED BY IT IS A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, AND IF INTERVENER #1 HAS THE REQUISITE MEMBERSHIP IN THAT UNIT, A FURTHER REPRESENTATION VOTE WILL BE TAKEN WHEREIN THE EMPLOYEES OF THE "TECHNICAL BARGAINING UNIT" WILL BE GIVEN AN OPPORTUNITY TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH INTERVENER #1 OR THE SUCCESSFUL PARTY IN THE REPRESENTATION VOTE DIRECTED ABOVE.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - TERMINATION

14059-67-R: JOE LEWIS (APPLICANT) V. TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIO (RESPONDENT).

RE: KCL PACKAGING OF CANADA LIMITED.

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT HEARING: DAVID STOCK FOR THE APPLICANT, AND
L. A. MACLEAN, S. PUNNETT, CLAIRE EASTO, AND J. SPEERS FOR
THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 6, 1968.

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2. THIS IS AN APPLICATION UNDER SECTION 43(2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

3. IN SUPPORT OF THE APPLICATION THERE WAS FILED A DOCUMENT BEARING THE SIGNATURES OF 18 OUT OF THE 24 EMPLOYEES IN THE BARGAINING UNIT. THE BOARD, IN ORDER TO ASCERTAIN WHETHER THE EMPLOYEES HAD VOLUNTARILY SIGNED THE DOCUMENT AS SIGNIFYING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE UNION, CONDUCTED ITS CUSTOMARY INQUIRY INTO THE ORIGINATION AND CIRCULATION OF THE DOCUMENT AND THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED.

4. THE EVIDENCE TENDERED BY ONE WITNESS CALLED BY THE APPLICANT ESTABLISHED THAT HE AND ONE OTHER EMPLOYEE SIGNED THE DOCUMENT UPON BEING PRESENTED WITH IT BY MR. JACKSON, THE MANAGER OF THE PLANT. THE LATTER KEPT THE DOCUMENT AFTER THE TWO SIGNATURES WERE PLACED ON IT. ANOTHER WITNESS FOR THE APPLICANT TESTIFIED THAT MR. JACKSON BROUGHT THE DOCUMENT

TO HER AT HER WORK STATION IN THE PLANT, IDENTIFIED IT TO HER, AND LEFT IT ON A NEARBY TABLE FOR THOSE WHO WANTED TO SIGN IT. A THIRD WITNESS TESTIFIED THAT SHE SIGNED THE DOCUMENT AT THE SUPERINTENDENT'S DESK IN HIS PRESENCE. THE APPLICANT TESTIFIED THAT HE LEFT THE DOCUMENT IN THE SUPERINTENDENT'S OFFICE AND ADVISED EMPLOYEES THAT IF THEY WANTED TO SIGN THEY COULD DO SO IN THE OFFICE. THUS THE DOCUMENT, WHEN NOT BEING CIRCULATED BY MANAGEMENT, WAS VIRTUALLY IN THE CUSTODY OF MANAGEMENT IN THE SUPERINTENDENT'S OFFICE. NO EVIDENCE WAS GIVEN AS TO THE CIRCUMSTANCES UNDER WHICH THE REMAINING 13 SIGNATURES WERE OBTAINED.

5. AS MUST BE OBVIOUS, IN VIEW OF THE FOREGOING THE BOARD IS NOT SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF KCL PACKAGING OF CANADA LIMITED, IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION ON JANUARY 25TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE ACT.

6. THE APPLICATION IS THEREFORE DISMISSED.

14128-67-R: HECTOR POIRIER (APPLICANT) V. CANADIAN CONSTRUCTION WORKERS' UNION DIVISION No. 1 N. C. C. L. (RESPONDENT).

RE: TAPLEN CONSTRUCTION LIMITED.

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: J. B. WATERMAN AND F. MANONI FOR THE APPLICANT, CLIVE THOMAS FOR THE RESPONDENT.

DECISION OF THE BOARD: FEBRUARY 29, 1968.

1. THIS IS AN APPLICATION MADE PURSUANT TO THE PROVISIONS OF SECTION 45A OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT WAS NOT, AT THE TIME IT ENTERED INTO AN AGREEMENT WITH TAPLEN CONSTRUCTION LIMITED, ENTITLED TO REPRESENT THE EMPLOYEES OF TAPLEN CONSTRUCTION LIMITED IN THE BARGAINING UNIT. THE APPLICANT IS AN EMPLOYEE OF TAPLEN CONSTRUCTION LIMITED.

2. THE RESPONDENT CALLED EVIDENCE AT THE HEARING TO ESTABLISH THAT THE RESPONDENT WAS A TRADE UNION THAT WAS ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO.

3. THE APPLICANT CALLED EVIDENCE IN SUPPORT OF ITS CHARGES OF IMPROPER CONDUCT WHICH AROUSED SUSPICIONS CONCERNING THE RELATIONSHIP BETWEEN THE RESPONDENT AND TAPLEN CONSTRUCTION LIMITED. HOWEVER, ALL THE EVIDENCE OF IMPROPER CONDUCT RELATED TO EVENTS SUBSEQUENT TO THE DATE WHEN ALL THE MEMBERSHIP EVIDENCE SUBMITTED BY THE RESPONDENT WAS SIGNED. SINCE THE EVENTS OF WHICH THE APPLICANT COMPLAINS TOOK PLACE AFTER THE MEMBERSHIP EVIDENCE WAS SIGNED, SUCH EVENTS COULD NOT CONCEIVABLY AFFECT THE QUALITY OF THE MEMBERSHIP EVIDENCE UPON WHICH THE RESPONDENT RELIED.

4. THE BOARD THEREFORE FINDS THAT THE RESPONDENT HAS SATISFIED THE ONUS ON IT AS REQUIRED BY SECTION 45A(3) AND HAS ESTABLISHED THAT IT WAS A TRADE UNION THAT WAS ENTITLED TO REPRESENT THE EMPLOYEES OF TAPLEN CONSTRUCTION LIMITED IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT BETWEEN THE RESPONDENT AND TAPLEN CONSTRUCTION LIMITED WAS ENTERED INTO.

5. THE APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - SECTION 63

14140-67-M: J. R. CANVIN (COMPLAINANT) V. CANADIAN UNION OF OPERATING ENGINEERS (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 29, 1968.

1. THIS IS A COMPLAINT UNDER SECTION 63 OF THE LABOUR RELATIONS ACT THAT THE RESPONDENT HAS FAILED, UPON THE COMPLAINANT'S REQUEST, TO FURNISH HIM WITH A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR. THE COMPLAINT WAS FORWARDED TO THE RESPONDENT FOR ITS COMMENTS AND IN DUE COURSE THE RESPONDENT FILED A REPLY AND SUPPORTING MATERIALS. THESE, IN TURN, WERE FORWARDED TO THE COMPLAINANT FOR HIS COMMENTS WHICH HAVE NOW BEEN RECEIVED.

2. IT APPEARS FROM THE MATERIALS FILED THAT THE COMPLAINANT, PRIOR TO THE FILING OF THIS COMPLAINT, REQUESTED AN AUDITED FINANCIAL STATEMENT AND THAT ONE WAS SUPPLIED CERTIFIED BY THE GENERAL SECRETARY TREASURER TO BE A TRUE COPY. IT FURTHER APPEARS THAT THE COMPLAINANT WAS ONE OF THE AUDITORS OF AND SIGNED THE FINANCIAL STATEMENT IN QUESTION. THE COMPLAINANT IN THIS COMPLAINT IS NOT IN FACT COMPLAINING THAT HE DID NOT RECEIVE AN AUDITED FINANCIAL STATEMENT BUT THAT SOME OF THE STATEMENTS CONTAINED IN THAT FINANCIAL STATEMENT WERE UNTRUE. THE COMPLAINANT WOULD THEREFORE APPEAR TO BE ASKING THE BOARD TO DETERMINE WHETHER AN AUDITED FINANCIAL STATEMENT WHICH HE SIGNED AS AN AUDITOR ACCURATELY REFLECTS THE FINANCIAL POSITION OF THE RESPON-

DENT UNION AT THE TIME THE STATEMENT WAS PREPARED.

3. SECTION 63 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

63. EVERY TRADE UNION SHALL UPON THE REQUEST OF ANY MEMBER FURNISH HIM, WITHOUT CHARGE, WITH A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR CERTIFIED BY ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS TO BE A TRUE COPY, AND, UPON THE COMPLAINT OF ANY MEMBER THAT THE TRADE UNION HAS FAILED TO FURNISH SUCH A STATEMENT TO HIM, THE BOARD MAY DIRECT THE TRADE UNION TO FILE WITH THE REGISTRAR, WITHIN SUCH TIME AS THE BOARD DETERMINES, A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR VERIFIED BY THE AFFIDAVIT OF ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS AND TO FURNISH A COPY OF SUCH STATEMENT TO SUCH MEMBERS OF THE TRADE UNION AS THE BOARD IN ITS DISCRETION DIRECTS, AND THE TRADE UNION SHALL COMPLY WITH SUCH DIRECTION ACCORDING TO ITS TERMS.

QUITE CLERALLY, THE ONLY POWER THE BOARD HAS UNDER THIS SECTION IS TO DIRECT A TRADE UNION TO FILE A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS WITH THE REGISTRAR OF THE BOARD AND TO FURNISH A COPY OF SUCH STATEMENT TO SUCH MEMBERS OF THE TRADE UNION AS THE BOARD DIRECTS AND THE CONDITION PRECEDENT TO THE EXERCISE OF THIS POWER IS THAT THE TRADE UNION HAS FAILED TO FURNISH A FINANCIAL STATEMENT ON REQUEST TO A MEMBER. IT IS CLEAR THAT THE CONDITION PRECEDENT DOES NOT EXIST IN THIS CASE BECAUSE THE COMPLAINANT ACKNOWLEDGES THAT HE HAS RECEIVED AN AUDITED FINANCIAL STATEMENT, FURNISHED HIM ON HIS REQUEST. IN OUR VIEW, THE BOARD HAS NO POWER TO INQUIRE INTO THE ACCURACY OR OTHERWISE OF ANY AUDITED FINANCIAL STATEMENT OF A TRADE UNION.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE COMPLAINT DOES NOT IN OUR OPINION MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS HEREBY DISMISSED.

INDEXED ENDORSEMENT - PROSECUTION

14090-67-U: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. HENRY ALPHONSE DUQUETTE (I.G.A. FOODLINER, TILBURY) (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFE, AND J.E.C. ROBINSON.

APPEARANCES AT HEARING: L. V. PATHE, LES DOWLING FOR THE APPLICANT. E. L. STRINGER, H. DUQUETTE FOR THE RESPONDENT.

DECISION OF THE BOARD:

FEBRUARY 20, 1968.

1. THE APPLICANT HAS APPLIED FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT FOR A VIOLATION OF SECTION 59(1) OF THE LABOUR RELATIONS ACT WITH RESPECT TO TWO EMPLOYEES OF THE RESPONDENT NAMELY, HARRY BARR AND BRUCE EMBURY.

2. AT THE HEARING, THE RESPONDENT MADE A PRELIMINARY MOTION FOR DISMISSAL OF THE APPLICATION AS IT APPLIED TO HARRY BARR ON THE BASIS THAT THE APPLICATION DID NOT DISCLOSE AN OFFENCE. IN SUPPORT THEREOF THE RESPONDENT SUBMITTED THAT THE APPLICANT ALLEGED THAT THE RESPONDENT "ENDEAVOURED TO CHANGE THE METHOD OF REMUNERATION TO EMPLOYEES" AND "DID ATTEMPT TO CHANGE THE METHOD OF PAYMENT TO MR. HARRY BARR" NEITHER OF WHICH CONSTITUTE AN OFFENCE UNDER THE ACT AND THAT THEREFORE THE BOARD SHOULD DISMISS THE APPLICATION IN THIS REGARD.

3. SECTION 59 (1) OF THE LABOUR RELATIONS ACT READS IN PART AS FOLLOWS:

WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OR SECTION 40 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES,...

IN THE SEVEN-UP BOTTLING Co. CASE, 2 CLLC 16, 227 AT P. 1012, THE BOARD STATED "THIS IS A QUASI CRIMINAL PROCEEDING AND CONSENT TO PROSECUTE CAN ONLY BE GRANTED WITHIN THE COMPREHENSION OF AN OFFENCE ALLEGED TO HAVE BEEN COMMITTED". THE BOARD, HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, GRANTED AT THE HEARING THE MOTION OF THE RESPONDENT AND ACCORDINGLY DISMISSED THE APPLICATION AS IT PERTAINED TO HARRY BARR.

4. THE APPLICANT THEN PROCEEDED WITH ITS APPLICATION IN REGARD TO BRUCE EMBURY. MR. LES DOWLING, UNION REPRESENTATIVE, TESTIFIED THAT THE APPLICANT HAD BEEN CERTIFIED BY THE BOARD AS THE BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. THE PARTIES HAD THEREAFTER ENTERED INTO NEGOTIATIONS BUT THEY HAD NOT BEEN SUCCESSFUL IN ARRIVING AT A COLLECTIVE AGREEMENT. BY LETTER DATED JANUARY 18TH, 1968 THE DEPUTY MINISTER OF LABOUR INFORMED THE PARTIES THAT A CONCILIATION BOARD WOULD NOT BE APPOINTED. MR. DOWLING STATED THAT BRUCE EMBURY HAD TOLD HIM BY TELEPHONE THAT HE HAD BEEN DISMISSED BY THE RESPONDENT ON SATURDAY, JANUARY 27TH. HE ADMITTED THAT HE WAS NOT PRESENT WHEN EMBURY WAS DISMISSED. MR. DOWLING FURTHER TESTIFIED THAT WHEN HE WENT ON PICKET DUTY AT THE RESPONDENT'S STORE HE BECAME AWARE THAT OTHER PEOPLE WERE WORKING IN THE MEAT DEPARTMENT AT THAT TIME.

5. HARRY BARR TESTIFIED THAT HE WAS EMPLOYED BY THE RESPONDENT AS THE MEAT MANAGER AND THAT BRUCE EMBURY WAS A MEAT CUTTER. HE HAD HAD

DISCUSSIONS WITH MR. DUQUETTE FROM TIME TO TIME WITH RESPECT TO THE OPERATION OF THE MEAT DEPARTMENT AND PARTICULARLY CONCERNING THE POSSIBILITY OF MOVING EMBURY FROM THAT DEPARTMENT TO THE PRODUCE DEPARTMENT. HE ADMITTED IN CROSS-EXAMINATION THAT EMBURY WAS NEVER IN FACT MOVED NOR WERE HIS WAGES CHANGED IN SPITE OF SUCH CONVERSATIONS THAT HE HAD WITH MR. DUQUETTE. MR. BARR SAID THAT HE IS ON COMPENSATION AND LAST WORKED AT THE STORE ON JANUARY 19TH. THE APPLICANT DID NOT ADDUCE ANY FURTHER EVIDENCE.

6. THE EVIDENCE BEFORE US DOES NOT IN ANY WAY SUPPORT THE CHARGE OF THE APPLICANT THAT THE RESPONDENT CHANGED THE WORKING CONDITIONS OF BRUCE EMBURY WITHOUT THE CONSENT OF THE TRADE UNION CONTRARY TO SECTION 59(1) OF THE LABOUR RELATIONS ACT THEREBY RESULTING IN HIS DISMISSAL FROM EMPLOYMENT. HAVING REGARD TO ALL THE CIRCUMSTANCES, THE APPLICANT FAILED TO ESTABLISH A CASE FOR THE GRANTING OF CONSENT TO THE INSTITUTION OF A PROSECUTION.

7. THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

13898-67-U: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA, LOCAL 905 (COMPLAINANT) V. FISHER-PRICE TOYS (CANADA) LIMITED (RESPONDENT)

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: J. SACK AND BRUCE DAVIS FOR THE COMPLAINANT, AND R. D. PERKINS AND D. TRIBE FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER J. E. C. ROBINSON: FEBRUARY 7, 1968.

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2. THIS IS A COMPLAINT THAT DARLENE KALTE HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT, TOGETHER WITH A REQUEST THAT SHE BE REINSTATED IN EMPLOYMENT WITH COMPENSATION FOR LOST WAGES.

3. DARLENE KALTE, HEREINAFTER REFERRED TO AS THE AGGRIEVED, WAS HIRED BY THE RESPONDENT COMPANY ON OR ABOUT THE 9TH OF SEPTEMBER, 1967, AS A RECEPTIONIST. ABOUT MID-OCTOBER SHE WAS REMOVED FROM THIS JOB AS UNSATISFACTORY AND WAS OFFERED A JOB AS CLERK-TYPIST AT \$60 PER WEEK, WHICH REPRESENTED A DECREASE OF \$15 PER WEEK. SHE REMAINED IN THAT JOB UNTIL NOVEMBER 13TH, WHEN SHE WAS DISCHARGED BY DAVID TRIBE, PERSONNEL MANAGER OF THE RESPONDENT COMPANY. ON NOVEMBER 6TH, 1967, THE COMPLAINANT UNION APPLIED TO THE ONTARIO LABOUR RELATIONS BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR THE PLANT EMPLOYEES. ON NOVEMBER 13TH, 1967, THE SAME UNION APPLIED TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR THE OFFICE STAFF. IN EACH CASE A CERTIFICATE WAS GRANTED.

4. ON THE 4TH OF NOVEMBER, 1967, THE AGGRIEVED WAS INVOLVED IN AN ARGUMENT WITH A FELLOW-EMPLOYEE, WILLIAM DE PRINSE, CONCERNING UNIONS. THE ALTERCATION WAS QUITE HEATED, AND THE AGGRIEVED LEFT NO DOUBT THAT SHE WAS WHOLEHEARTEDLY IN SUPPORT OF UNIONS. THERE WAS NO MENTION OF THE COMPLAINANT UNION AS SUCH, AND THE DISCUSSION APPEARS TO HAVE BEEN A DEBATE UPON THE MERITS OF UNIONS IN GENERAL. AT THE CONCLUSION OF THE ARGUMENT, DE PRINSE REPORTED THE INCIDENT TO DAVID TRIBE, THE PERSONNEL MANAGER, ADVISING HIM OF MRS. KALTE'S OPINIONS WITH RESPECT TO UNIONS.

5. EVIDENCE WAS GIVEN BY WITNESSES FOR THE RESPONDENT THAT THE AGGRIEVED WAS NOT PERFORMING HER DUTIES TO THE SATISFACTION OF HER SUPERVISORS. HER IMMEDIATE SUPERVISOR, MRS. HAYES, TESTIFIED THAT SHE CHECKED MRS. KALTE'S WORK AND WAS OBLIGED TO SPEAK TO HER FROM TIME TO TIME WITH RESPECT TO HER ERRORS AND ADVISE HER THAT SHE WAS MAKING TOO MANY MISTAKES. THERE WAS, HOWEVER, NOTHING IN THE NATURE OF A WARNING OF DISCHARGE GIVEN TO MRS. KALTE AT ANY TIME DURING HER EMPLOYMENT.

6. MRS. EDNA HAYES KNEW NOTHING ABOUT MRS. KALTE'S UNION SYMPATHIES AND TOOK NO DIRECT PART IN HER DISCHARGE. MRS. DOROTHY BARTEN, THE ACCOUNTING MANAGER TO WHOM MRS. HAYES REPORTED, WAS IN OVERALL CHARGE OF THE OFFICE. SHE GAVE THE WORK TO MRS. HAYES FOR DISTRIBUTION TO THE AGGRIEVED, AND MRS. HAYES REPORTED BACK TO HER. HER TESTIMONY WAS THAT MRS. HAYES WAS CONSTANTLY BRINGING TO HER ATTENTION MISTAKES MADE BY THE AGGRIEVED AND THAT, AS A RESULT OF THESE REPORTS, SHE WENT TO MR. TRIBE TO COMPLAIN TO HIM ABOUT THE AGGRIEVED'S WORK AND TO REQUEST THAT HE DISCHARGE HER. MR. TRIBE ADVISED MRS. BARTEN THAT THE AGGRIEVED STILL HAD TWO WEEKS OF HER PROBATIONARY PERIOD TO RUN, AND HE SUGGESTED THAT SHE BE ALLOWED THAT FURTHER PERIOD TO MEET MRS. BARTEN'S STANDARDS. IN HER OPINION THE WORK BEING DONE BY THE AGGRIEVED AT THAT TIME WAS "VERY BAD WORK AND VERY SLOPPY."

7. ON NOVEMBER 13TH, 1967, MRS. BARTEN, ON RECEIVING SOME FURTHER COMPLAINTS FROM MRS. HAYES, WENT AGAIN TO MR. TRIBE TO URGE HIM TO DISCHARGE THE AGGRIEVED. HER TESTIMONY IS THAT SHE WAS AWARE OF THE FACT THAT THE PROBATIONARY PERIOD WAS ABOUT TO EXPIRE, AND IT WAS THAT FACT THAT CAUSED HER TO SEE MR. TRIBE ON THAT PARTICULAR DATE. THERE IS NO EVIDENCE THAT MRS. BARTEN WAS AT ANY TIME AWARE EITHER OF THE GENERAL UNION ACTIVITY OR OF THE AGGRIEVED'S EXPRESSED OPINIONS WITH RESPECT TO UNIONS. IT WAS HER EVIDENCE THAT THE ACTION SHE INITIATED ON NOVEMBER 13TH WAS BECAUSE OF THE WORK OF THE AGGRIEVED AND THE EXPIRATION OF THE PROBATIONARY PERIOD.

8. MR. DAVID TRIBE GAVE EVIDENCE DURING WHICH HE RELATED THE CONVERSATION HE HAD HAD WITH MR. DE PRINSE CONCERNING THE PRO-UNION VIEWS OF THE AGGRIEVED. THERE IS THEREFORE NO DOUBT OF HIS AWARENESS OF HER POSITION. THERE ALSO CAN BE NO DOUBT THAT HE WAS AWARE OF THE UNION ACTIVITY AMONG THE EMPLOYEES OF THE COMPANY. HE DENIED THAT HIS KNOWLEDGE OF THE AGGRIEVED'S PRO-UNION SENTIMENTS HAD ANY BEARING ON THE FACT OF HER DISCHARGE. HIS EVIDENCE CORROBORATES THAT OF MRS. BARTEN WITH RESPECT TO HER REQUEST FOR DISCHARGE OF THE AGGRIEVED TWO WEEKS PRIOR TO THE ACTUAL EVENT. HE FELT THAT A DECISION HAD TO BE MADE AT THE END OF THE PROBATIONARY PERIOD; OTHERWISE, BECAUSE OF THE POLICY

OF THE COMPANY, THEY MIGHT BE OBLIGED TO CONTINUE THE AGGRIEVED IN HER EMPLOYMENT NOTWITHSTANDING THE FACT THAT MRS. BARTEN WAS NOT SATISFIED WITH HER PERFORMANCE. THE PROBATIONARY PERIOD, INCIDENTALLY, WAS ONE OF 350 HOURS, ACCORDING TO THE COMPANY'S EVIDENCE. THE APPLICATION FORM SIGNED BY THE AGGRIEVED CONTAINS AN ACKNOWLEDGEMENT THAT SHE REALIZED SHE WAS ON TRIAL, ALTHOUGH NO SPECIFIC REFERENCE TO THE TIME INVOLVED IS MENTIONED IN THE FORM ITSELF.

9. HAVING REVIEWED ALL THE EVIDENCE, WE ARE OF THE OPINION THAT THE REAL INSTIGATOR AND AUTHOR OF THE DISCHARGE OF THE AGGRIEVED WAS THE ACCOUNTING MANAGER OF THE COMPANY WHO, IT WOULD APPEAR TO US, IS MORE THAN ORDINARILY EXACTING IN HER JUDGEMENT OF WHAT CONSTITUTES ACCEPTABLE WORK. WE BELIEVE, NEVERTHELESS, THAT IT WAS THIS INSISTENCE ON NEAR PERFECTION, RATHER THAN ANY OTHER MATTER, WHICH MOTIVATED HER STAND ON TRIE DISCHARGING THE AGGRIEVED. IN OUR OPINION, THE EVIDENCE INDICATES THAT THERE WAS A PURELY COINCIDENTAL MERGING OF THE ENDING OF THE PROBATIONARY PERIOD AND THE ORGANIZATIONAL ACTIVITIES OF THE UNION.

10. CONSEQUENTLY, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT SATISFIED THE ONUS UPON IT TO ESTABLISH THAT THE AGGRIEVED WAS DEALT WITH CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, AND THE COMPLAINT IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER O. HODGES: FEBRUARY 7, 1968.

1. I DISSENT.

2. THE PRIME MOVER IN THE DISCHARGE OF DARLENE KALTE WAS MR. TRIBE, PERSONNEL MANAGER. THE REAL REASON WAS MRS. KALTE'S STRONG PRO-UNION SENTIMENTS, AND NOT TYPING ERRORS, AS THE MAJORITY FIND.

3. THERE IS NO QUESTION BUT THAT MRS. KALTE, AN EXPERIENCED TYPIST PREVIOUSLY EMPLOYED AS SUCH IN A BANK, MADE SOME ERRORS. SO DOES EVERY TYPIST. THE DEGREE OF ERROR OFFERED AS EVIDENCE IS NOT BEYOND THE NORM AND WOULD NOT HAVE RESULTED IN DISCHARGE UNDER NORMAL CIRCUMSTANCES.

4. OBVIOUSLY, THIS WOMAN HAS BEEN DISCHARGED BECAUSE OF HER OUTSPOKEN SUPPORT FOR A UNION. IT IS OF INTEREST TO NOTE THAT SHE WAS DEMOTED TO A SIXTY-DOLLARS-A-WEEK JOB FROM A SEVENTY-FIVE-DOLLARS-A-WEEK RECEPTIONIST JOB, FOR WHICH SHE WAS ORIGINALLY HIRED BY MR. TRIBE. HER REPLACEMENT AT THE RECEPTIONIST DESK WAS PAID ONLY \$60. IT APPEARS TO ME THAT THE REPLACEMENT OF MRS. KALTE AS A RECEPTIONIST WAS DICTATED BY ECONOMIC REASONS OF CONCERN TO THE COMPANY AND HAD NOTHING TO DO WITH HER BEING AN UNSATISFACTORY RECEPTIONIST, AS ALLEGED.

5. THE EVIDENCE AND OPINION OF MRS. DOROTHY BARTEN THAT ANY ERROR IS NOT TOLERABLE IS JUST UNREAL. IF HER REASONING WERE APPLIED TO ALL EMPLOYEES, AS IT WOULD HAVE TO BE TO AVOID BIAS AGAINST MRS.

KALTE, THE PLANT WOULD BE WITHOUT STAFF ALTOGETHER.

6. MY FINDING IS THAT DOROTHY KALTE BE REINSTATED WITH FULL COMPENSATION FOR LOSS.

14018-67-U: INTERNATIONAL JEWELRY WORKERS UNION (COMPLAINANT) V.
M. Z. M. LABORATORY LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND F. W. MURRAY.

APPEARANCES AT HEARING: ANGEL D. RIVERA AND H. HEARD FOR THE APPLICANT, BRUCE STEWART, G. ZARUBE FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER F. W. MURRAY: FEBRUARY 15, 1968.

1. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. IT IS ALLEGED THAT JOAN BAXTER AND H. HEARD WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A)(B)(C) OF THE ACT. THE COMPLAINANT REQUESTS THAT THE AGGRIEVED PERSONS BE REINSTATED IN THEIR EMPLOYMENT WITH COMPENSATION FOR LOSS OF PAY. THE RESPONDENT DENIES THE COMPLAINTS.

2. BY LETTER DATED JANUARY 26TH, 1968, THE SOLICITORS FOR THE RESPONDENT ASKED THE BOARD TO REQUEST THE APPLICANT TO PROVIDE PARTICULARS OF ITS CLAIM IN ACCORDANCE WITH SECTION 47 OF THE BOARD'S RULES OF PROCEDURE. ON JANUARY 29TH, 1968, THE REGISTRAR OF THE BOARD FORWARDED TO THE COMPLAINANT A COPY OF THIS LETTER AT THE SAME TIME DIRECTING THE COMPLAINANT'S ATTENTION TO THE SAID SECTION 47. THE COMPLAINANT FAILED TO GIVE THE PARTICULARS OF ITS CLAIMS PRIOR TO OR AT THE HEARING AND OFFERED NO SATISFACTORY EXPLANATION TO THE BOARD FOR ITS OMISSION IN THIS REGARD.

3. AT THE HEARING ON FEBRUARY 7TH 1968, THE COMPLAINANT, AFTER CALLING ITS FIRST WITNESS BUT BEFORE EVIDENCE WAS GIVEN, REQUESTED AN ADJOURNMENT OF THE CASE ON THE BASIS THAT ONE OF THE AGGRIEVED PERSONS, JOAN BAXTER, COULD NOT ATTEND BECAUSE SHE HAD BEEN INVOLVED IN A CAR ACCIDENT ON JANUARY 29TH AND WAS STILL UNDER DOCTOR'S CARE. MR. RIVERA SAID THAT HE WAS MADE AWARE OF THE FULL EXTENT OF HER INJURIES ON MONDAY, FEBRUARY 5TH. NEITHER THE BOARD NOR THE RESPONDENT WAS GIVEN NOTICE OF THIS CIRCUMSTANCE PRIOR TO THE HEARING. COUNSEL FOR THE RESPONDENT OBJECTED TO AN ADJOURNMENT BEING GRANTED BY THE BOARD AT THIS STAGE AS HE HAD NOT RECEIVED ANY NOTICE OF THE REQUEST AND IN FACT WAS NOT MADE AWARE OF SAME UNTIL THE CASE HAD BEEN CALLED. FURTHER IN SPITE OF THE LACK OF PARTICULARS OF THE CLAIMS, THE RESPONDENT WAS READY AND WILLING TO PROCEED AND HAD WITNESSES IN ATTENDANCE. THE RESPONDENT INDICATED IT WOULD BE FINANCIALLY PREJUDICED BY THE DELAY IN THIS MATTER.

4. THE BOARD CAREFULLY CONSIDERED THE COMPLAINANT'S REQUEST FOR AN ADJOURNMENT AND THE REPRESENTATIONS OF THE PARTIES IN RESPECT THERETO. THE BOARD RULED THAT IT WOULD GRANT THE ADJOURNMENT REQUESTED BY THE COMPLAINANT ON THE FOLLOWING TERMS:

(A) THAT FULL PARTICULARS OF THE CLAIMS WOULD BE DELIVERED TO THE RESPONDENT NOT LATER THAN WEDNESDAY, FEBRUARY 14TH, 1968;

(B) THAT THE MATTER BE LISTED BY THE REGISTRAR OF THE BOARD FOR CONTINUATION OF HEARING AS SOON AS POSSIBLE THEREAFTER;

(C) THAT THE COMPLAINANT PAY TO THE RESPONDENT ITS COSTS OF THE DAY, THE AMOUNT OF WHICH TO BE DETERMINED BY THE PARTIES PROVIDED THAT IF THE PARTIES COULD NOT AGREE ON THE AMOUNT OF SUCH COSTS EITHER OF THEM COULD REQUEST THE BOARD TO FIX THE AMOUNT PAYABLE.

IN ARRIVING AT ITS DECISION IN THIS REGARD, THE BOARD CONSIDERED THE FOLLOWING MATTERS; THE STAGE OF THE PROCEEDINGS WHEN THE COMPLAINANT'S REQUEST WAS MADE; THAT JOAN BAXTER IS NAMED IN THE APPLICATION AS AN AGGRIEVED PERSON; THE TIME BETWEEN THE DATE OF JOAN BAXTER'S ACCIDENT AND THE DATE OF THE HEARING WHICH WAS MORE THAN AMPLE FOR THE COMPLAINANT TO ASSESS ITS POSITION CONCERNING THE APPLICATION; THAT PARTICULARS HAD NOT BEEN PROVIDED BY THE COMPLAINANT IN ACCORDANCE WITH THE TIMELY REQUEST OF THE RESPONDENT UNDER SECTION 47 OF THE BOARD'S RULES OF PROCEDURE.

5. AFTER HEARING THE CONDITIONS IMPOSED BY THE BOARD FOR THE GRANTING OF THE COMPLAINANT'S REQUEST FOR AN ADJOURNMENT, THE COMPLAINANT WITHDREW ITS MOTION AND ADVISED THE BOARD THAT IT WOULD PROCEED WITH THE CASE. SINCE THE RESPONDENT HAD ALSO INDICATED ITS WILLINGNESS TO PROCEED, THE BOARD THEN DIRECTED THE COMPLAINANT TO PRESENT ITS EVIDENCE.

6. MISS HEARD TESTIFIED THAT SHE HAD BEEN EMPLOYED BY THE RESPONDENT AS A DRIVER FROM OCTOBER, 1967 TO DECEMBER 27TH, 1967 ON WHICH DATE SHE WAS LAID OFF. SHE STATED THAT SHE WAS UNEMPLOYED FROM THAT DATE UNTIL FEBRUARY 3RD, 1968 WHEN SHE OBTAINED A JOB AS A DRIVER WITH YELLOW CAB. THE RESPONDENT CONTACTED HER BY TELEPHONE ON JANUARY 9TH AND 10TH AND REQUESTED HER TO RETURN TO WORK BUT FOR PERSONAL REASONS SHE SAID THAT SHE COULD NOT THEN RETURN. SUBSEQUENTLY, ON JANUARY 12TH, SHE RECEIVED A LETTER DATED JANUARY 10TH FROM THE RESPONDENT CONFIRMING THE TELEPHONE CONVERSATIONS AND REQUESTING HER TO RETURN TO WORK BY FRIDAY, JANUARY 12TH AT 8:30 A.M. AND INDICATED THAT IF SHE DID NOT RETURN AT THAT TIME, THE RESPONDENT WOULD HAVE TO REPLACE HER. MISS HEARD STATED THAT SHE RECEIVED THE LETTER SOME TIME IN THE MORNING OF THE 12TH AFTER 8:30 A.M. AND SINCE SHE COULD NOT COMPLY WITH THE TERMS SET OUT IN THE LETTER DID NOT DO ANYTHING FURTHER ABOUT THE MATTER UNTIL THE FOLLOWING MONDAY WHEN SHE CONTACTED THE UNION OFFICE. THE RESPON-

DENT ON THAT DAY ADVISED HER IN RESPONSE TO HER TELEPHONE CALL THAT THEY DID NOT NEED HER. MISS HEARD TESTIFIED THAT SHE WAS THE ORGANIZER FOR THE UNION IN THE RESPONDENT'S PLANT AND SHE UNDERSTOOD FROM REMARKS MADE TO HER BY OTHER EMPLOYEES (WHICH ARE INADMISSIBLE AS EVIDENCE IN THIS MATTER) THAT THIS WAS THE REASON FOR HER LAY OFF BY THE RESPONDENT IN DECEMBER, RATHER THAN THE LACK OF WORK WHICH THE RESPONDENT HAD TOLD HER WAS THE REASON AT THAT TIME. MISS HEARD, HOWEVER, ADMITTED ON CROSS-EXAMINATION THAT NO ONE FROM MANAGEMENT HAD EVER MENTIONED UNION TO HER AT ALL. SHE ALSO STATED THAT SHE WOULD NOT RETURN TO WORK FOR THE RESPONDENT. SHE HAD APPLIED FOR UNEMPLOYMENT INSURANCE BUT WAS REFUSED. WHILE SHE WORKED FOR THE RESPONDENT SHE RECEIVED \$55.00 PER WEEK AND IN HER PRESENT JOB RECEIVES COMMISSIONS IN THE AREA OF \$12.00 TO 17.00 A DAY.

7. THE COMPLAINANT DID NOT OFFER ANY FURTHER EVIDENCE WITH RESPECT TO THE CLAIMS OF THE AGGRIEVED PERSONS. COUNSEL FOR THE RESPONDENT THEN MOVED THAT ON THE BASIS OF THE EVIDENCE BEFORE THE BOARD THE COMPLAINANT HAD NOT ESTABLISHED A PRIMA FACIE CASE WITH RESPECT TO THE CLAIMS OF EITHER OF THE AGGRIEVED PERSONS AND REQUESTED THE BOARD TO DISMISS THE APPLICATION.

8. THERE IS NO EVIDENCE WHATSOEVER BEFORE THE BOARD IN CONNECTION WITH THE COMPLAINANT'S CLAIM REGARDING JOAN BAXTER. THE BOARD HOWEVER NOTED MR. RIVERA'S STATEMENT IN CONNECTION WITH THIS CLAIM THAT JOAN BAXTER WAS NOT WILLING TO RETURN TO WORK FOR THE RESPONDENT IN ANY EVENT.

9. IN DEALING WITH THE CLAIM OF MISS HEARD IT IS CLEAR THAT SHE WAS LAID OFF BY THE RESPONDENT ON DECEMBER 27TH. IT IS ALSO CLEAR THAT TEN DAYS LATER THE RESPONDENT BOTH BY TELEPHONE AND BY LETTER REQUESTED HER TO RETURN TO WORK. THIS UNCONTRADICTED FACT MUST NECESSARILY GO A LONG WAY IN DISPELLING ANY QUESTION OF UNFAIRNESS AND CERTAINLY DOES NOT CORRESPOND TO THE AGGRIEVED PERSON'S ALLEGATION THAT SHE WAS LAID OFF BY THE RESPONDENT BECAUSE OF HER UNION ACTIVITIES. THERE IS NO EVIDENCE BEFORE THE BOARD TO SUPPORT THE COMPLAINANT'S CONTENTION IN THAT REGARD. FURTHERMORE, MISS HEARD TOLD THE BOARD THAT SHE WOULD NOT RETURN TO WORK FOR THE RESPONDENT IN ANY EVENT. IN CASES OF THIS NATURE THE COMPLAINANT IS UNDER A PRIMARY OBLIGATION TO ESTABLISH TO THE SATISFACTION OF THE BOARD BY SUBSTANTIAL ADMISSIBLE EVIDENCE THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT. IT HAS BEEN PREVIOUSLY STATED BY THE BOARD THAT MERE SUSPICION OF WRONG DOING IS NOT BY ITSELF SUFFICIENT EVIDENCE TO SHIFT THE ONUS TO THE RESPONDENT TO ANSWER FOR ITS ACTIONS. THERE MAY ALSO BE IN CERTAIN CASES AN ELEMENT OF UNFAIRNESS INVOLVED IN THE DISCHARGE OF AN EMPLOYEE. WHAT THE BOARD MUST HOWEVER DETERMINE FROM ALL THE EVIDENCE BEFORE IT IS WHETHER THE RESPONDENT'S ACTIONS REGARDING THE AGGRIEVED PERSON WERE CONTRARY TO THE ACT. THE EVIDENCE IN THE INSTANT CASE DOES NOT SUBSTANTIATE SUCH A CONCLUSION.

10. HAVING REGARD THEREFORE TO ALL THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF THE PARTIES, WE ARE NOT SATISFIED THAT THE AGGRIEVED PERSONS H. HEARD AND JOAN BAXTER WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT.

11. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER P. J. O'KEEFE:

FEBRUARY 15TH, 1968.

WHILE I AGREE WITH THE DECISION OF THE MAJORITY ON THE MERITS OF THIS MATTER I DISSENT FROM THE MAJORITY'S DECISION IN AWARDING COSTS OF THE DAY TO THE RESPONDENT AS A CONDITION OF GRANTING THE COMPLAINANT'S REQUEST FOR THE ADJOURNMENT OF THE CASE.

INDEXED ENDORSEMENT - SECTION 79A

13391-67-M: THE EAST YORK CIVIC FOREMEN'S UNION No. 820 (TRADE UNION) v. BOROUGH OF EAST YORK (FORMERLY THE CORPORATION OF THE TOWNSHIP OF EAST YORK) (EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: T. ARMSTRONG AND C. F. KITCHEN FOR THE
TRADE UNION, AND C. JOHN CANNON, Q.C., FOR THE EMPLOYER.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:
FEBRUARY 7, 1968.

1. THE MINISTER HAS REFERRED TO THE ONTARIO LABOUR RELATIONS BOARD, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER OR NOT, IN ALL THE CIRCUMSTANCES AND HAVING REGARD TO THE PROVISIONS OF SECTION 47A OF THE ACT, THE MINISTER OF LABOUR HAS THE POWER UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

2. ON THE 1ST OF JANUARY, 1967, PURSUANT TO THE PROVISIONS OF R.S.O. 1960, c. 96 s. 14, THE TOWN OF LEASIDE AND THE TOWNSHIP OF EAST YORK WERE AMALGAMATED AS THE CORPORATION OF THE BOROUGH OF EAST YORK, HEREINAFTER CALLED "THE BOROUGH".

3. AT THE TIME OF THE AMALGAMATION THE EAST YORK CIVIC FOREMEN'S UNION, HEREINAFTER CALLED "THE UNION", AND THE TOWNSHIP OF EAST YORK WERE PARTIES TO A COLLECTIVE AGREEMENT. THE UNION, BY LETTER DATED JANUARY 1ST, 1967, GAVE TO THE BOROUGH WHAT IT REFERRED TO AS "GENERAL NOTICE UNDER SECTION 47A OF THE LABOUR RELATIONS ACT WITH A VIEW OF (SIC) MAKING A COLLECTIVE AGREEMENT".

4. THE BOROUGH REPLIED TO THE NOTICE BY LETTER DATED FEBRUARY 6TH, 1967. THE GIST OF THE LETTER IS THAT THE BOROUGH WOULD BARGAIN WITH THE UNION OR ANY OF ITS LOCALS THAT THE BOARD (OBVIOUSLY THE ONTARIO LABOUR RELATIONS BOARD) MIGHT DECLARE TO BE THE BARGAINING AGENT FOR EMPLOYEES IN AN APPROPRIATE BARGAINING UNIT.

5. THE UNION, BY LETTER DATED OCTOBER 20TH, 1967, NOTIFIED THE BOROUGH THAT THE COMMITTEE OF LOCAL 820 WISHED TO ENTER INTO NEGOTIATIONS FOR A NEW AGREEMENT. THE LETTER INDICATED THAT COPIES OF THE CONTEMPLATED AMENDMENTS WOULD FOLLOW. AS A RESULT OF THIS LETTER, REPRESENTATIVES OF THE UNION MET WITH THE PERSONNEL AND NEGOTIATION COMMITTEE OF THE COUNCIL OF THE BOROUGH. THE COMMITTEE SUGGESTED

THAT THE UNION OBTAIN CERTIFICATION BEFORE SEEKING TO BARGAIN.

6. AGAIN, BY LETTER OF NOVEMBER 3RD, 1967, THE UNION WROTE TO THE BOROUGH CLERK GIVING NOTICE "OF ITS DESIRE TO BARGAIN FOR THE RENEWAL, WITH MODIFICATIONS, OF THE CURRENT COLLECTIVE AGREEMENT DATED JULY 28TH, 1966, PURSUANT TO ARTICLE 27 THEREOF, AND IN ACCORDANCE WITH SECTION 40 OF THE LABOUR RELATIONS ACT." THE LETTER REFERS TO ENCLOSED AMENDMENTS AND DRAWS ATTENTION TO SECTIONS 12 AND 41 OF THE ACT.

7. ON NOVEMBER 30TH, 1967, THE UNION ADDRESSED TO THE MINISTER OF LABOUR A REQUEST FOR APPOINTMENT OF CONCILIATION OFFICER. THE BOROUGH, BY LETTER DATED DECEMBER 6TH, OBJECTED TO THE GRANTING OF THE UNION'S REQUEST. IT SUBMITTED THAT, ON THE BASIS OF CERTAIN FACTS SET FORTH IN THE LETTER, THERE WAS RAISED A QUESTION OF THE AUTHORITY OF THE MINISTER TO APPOINT A CONCILIATION OFFICER AND RESPECTFULLY REQUESTED THE MINISTER TO REFER THE MATTER TO THE BOARD.

8. AT THE HEARING THE BOROUGH TOOK THE POSITION THAT INHERENT IN THE MATTER REFERRED TO THE BOARD IS THE QUESTION AS TO WHETHER THE PERSONS CONCERNED ARE EMPLOYEES WITHIN THE MEANING OF THE ACT. IT WAS ARGUED THAT THE USE OF THE WORD "EMPLOYEES" IN SECTION 47A BRINGS INTO PLAY THE PROVISIONS OF SECTION 1(3)(B) OF THE ACT AND RAISES THE QUESTION AS TO THE STATUS OF THE PERSONS COMPRISING WHAT MIGHT BE THE BARGAINING UNIT. IT WAS PROPOSED THAT THE BOARD SHOULD MAKE THE DETERMINATION ON THIS QUESTION.

9. IT IS ADMITTED THAT THE STATUS OF THE PERSONS WITH WHOM THIS MATTER IS CONCERNED WAS NOT RAISED DIRECTLY BEFORE THE MINISTER AS AN OBJECTION TO THE GRANTING OF CONCILIATION SERVICES. THE BOROUGH ARGUED, HOWEVER, THAT IN THE CORRESPONDENCE FILED WITH THE MINISTER AND REFERRED BY HIM TO THIS BOARD THE BOROUGH'S REPEATED SUGGESTION TO THE UNION THAT IT APPLY TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT CONTAINED, AS ONE OF ITS INGREDIENTS, THE MATTER OF THE EMPLOYMENT STATUS OF THE MEMBERS OF THE SUGGESTED BARGAINING UNIT. IN ADDITION, THE BOROUGH CONTENDED, SUBSECTION (5) OF SECTION 47A PROVIDES FOR A DETERMINATION BY THE BOARD AS TO WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS; AND THUS RAISES THE QUESTION OF THE STATUS OF THE EMPLOYEES IN THE UNIT OR UNITS, AS THE CASE MAY BE, DETERMINED BY THE BOARD.

10. THERE IS NO DOUBT THAT IT IS FULLY WITHIN THE POWER OF THE BOARD TO DETERMINE THE STATUS OF EMPLOYEES UNDER SECTION 1(3)(B) AND FURTHER TO FIND, ON THE BASIS OF ITS CONCLUSIONS WITH RESPECT TO THE FIRST MATTER, WHETHER THE ACT DOES OR DOES NOT APPLY TO THE PERSONS WITH RESPECT TO WHOM THE FIRST INQUIRY IS HELD. IN THIS CASE THERE ARISES, HOWEVER, THE PRELIMINARY PROBLEM AS TO WHETHER THAT QUESTION IS PROPERLY BEFORE THE BOARD ON THE REFERENCE FROM THE MINISTER WHEN IT IS QUITE CLEAR, AS ALREADY NOTED, THAT NO DIRECT REFERENCE WAS MADE TO THIS ASPECT OF THE CASE WHEN IT WAS BEFORE THE MINISTER.

11. THE QUESTION REFERRED TO THE BOARD, IT WILL BE RECOLLECTED, IS "WHETHER OR NOT, IN ALL THE CIRCUMSTANCES AND HAVING REGARD TO THE PROVISIONS OF SECTION 47A OF THE ACT, THE MINISTER OF LABOUR HAS POWER UNDER THE ACT TO APPOINT A CONCILIATION OFFICER."

12. WHILE IT IS TRUE THAT THE QUESTION OF THE STATUS OF THE EMPLOYEES UNDER SECTION 1(3)(B) WAS NOT RAISED DIRECTLY BEFORE THE MINISTER, IT CONCERNS A MATTER WHICH GOES TO THE QUESTION OF JURISDICTION AND THE APPLICABILITY OF THE ACT TO THE PARTICULAR SITUATION AND, THEREFORE, TO THE FUNDAMENTAL PORTION OF THE REFERENCE WHICH IS WHETHER THE MINISTER HAS POWER UNDER THE ACT TO APPOINT THE CONCILIATION OFFICER.

13. FURTHERMORE, IF THE PERSONS TO WHOM THE REFERENCE IS APPLICABLE ARE NOT EMPLOYEES UNDER THE ACT, OBVIOUSLY THE MINISTER DOES NOT HAVE THE POWER TO APPOINT A CONCILIATION OFFICER. IF, ON THE OTHER HAND, THEY ARE EMPLOYEES UNDER THE ACT THE MINISTER MAY OR MAY NOT, ACCORDING TO THE FACTS, APPOINT A CONCILIATION OFFICER. THAT BEING THE CASE, THE BOARD, IF IT DECLINES TO DEAL WITH THE ISSUE, CAN ONLY GIVE A PROVISIONAL ANSWER TO THE MINISTER. SUCH AN ANSWER WOULD OBVIOUSLY INVITE THE RAISING OF THE SAME OBJECTION BY THE BOROUGH IN THE CONCILIATION PROCEEDINGS AND MIGHT WELL INVOLVE A SECOND REFERENCE TO THE BOARD, WHICH WOULD SEEM AN ABSURD RESULT. IT DOES NOT SEEM REASONABLE OR PROPER FOR THE BOARD TO IGNORE THE QUESTION ENTIRELY SIMPLY BY REASON OF THE TIME AT WHICH IT WAS RAISED.

14. IN OUR OPINION THE BASIC NATURE OF THE QUESTION OF THE STATUS OF THE PERSONS CONCERNED UNDER SECTION 1(3)(B) MAKES IT IMPERATIVE, IF A PROPER ANSWER IS TO BE GIVEN TO THE MINISTER WITH RESPECT TO HIS POWERS UNDER THE ACT, THAT AN INQUIRY BE MADE, AS INDEED IT WOULD NORMALLY BE MADE IN A STRAIGHT SECTION 47A CASE IF THE ISSUE AROSE, INTO THE DUTIES AND RESPONSIBILITIES OF THE PERSONS IN THE PROPOSED BARGAINING UNIT SO THAT A PROPER DETERMINATION OF THEIR STATUS UNDER THE ACT MAY BE MADE AND AN ANSWER GIVEN TO THE MINISTER WITH THAT INFORMATION TO HAND.

15. THE REFERENCE TO THE BOARD IS MADE UNDER SECTION 79A OF THE LABOUR RELATIONS ACT, WHICH READS AS FOLLOWS:

"(1) WHERE A REQUEST IS MADE UNDER SECTION 13 OR SUBSECTION 4 OF SECTION 34, THE MINISTER MAY REFER TO THE BOARD ANY QUESTION THAT ARISES THAT IN HIS OPINION RELATES TO HIS AUTHORITY TO MAKE AN APPOINTMENT UNDER ANY SUCH PROVISION THAT IS MENTIONED IN THE REFERENCE, AND THE BOARD SHALL REPORT TO THE MINISTER ITS DECISION ON THE QUESTION. 1964, c. 53, s. 10.

(2) WHERE A QUESTION REFERRED UNDER SUBSECTION 1 INVOLVES AN ISSUE AS TO WHETHER ONE TRADE UNION IS THE SUCCESSOR OF ANOTHER TRADE UNION OR WHETHER A BUSINESS HAS BEEN SOLD BY ONE EMPLOYER

TO ANOTHER OR WHERE SUCH QUESTION INVOLVES AN ISSUE UNDER SUBSECTION 10 OF SECTION 47A, THE BOARD HAS THE SAME POWERS AND AUTHORITY AS IT HAS UNDER SECTION 47 OR 47A, AS THE CASE MAY BE, AS IF AN APPLICATION HAD BEEN MADE THEREUNDER, AND THE BOARD MAY ISSUE SUCH DIRECTIONS AS TO THE CONDUCT OF THE PROCEEDINGS AS IT DEEMS ADVISABLE. 1966, c. 76, s. 33."

16. IT IS COMMON GROUND THAT THE QUESTION PUT BY THE MINISTER INVOLVES AN ISSUE UNDER SUBSECTION (10) OF SECTION 47A; THE BOARD THEREFORE HAS, BY VIRTUE OF SECTION 79A(2), THE SAME POWERS AND AUTHORITY AS IF AN APPLICATION HAD BEEN MADE UNDER SECTION 47A OF THE ACT. THE SITUATION IS ADMITTEDLY ONE TO WHICH THE PROVISIONS OF SUBSECTION (10) OF SECTION 47A APPLY. THE SUBSECTION IS AS FOLLOWS:

"WHERE ONE OR MORE MUNICIPALITIES AS DEFINED IN THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT IS ERECTED INTO ANOTHER MUNICIPALITY, OR TWO OR MORE SUCH MUNICIPALITIES ARE AMALGAMATED, UNITED OR OTHERWISE JOINED TOGETHER, OR ALL OR PART OF ONE SUCH MUNICIPALITY IS ANNEXED, ATTACHED OR ADDED TO ANOTHER SUCH MUNICIPALITY, THE EMPLOYEES OF THE MUNICIPALITIES CONCERNED ARE DEEMED TO HAVE BEEN INTERMINGLED, AND,

- (A) THE BOARD MAY EXERCISE THE LIKE POWERS AS IT MAY EXERCISE UNDER SUBSECTION 5 AND 7 WITH RESPECT TO THE SALE OF A BUSINESS UNDER THIS SECTION;
- (B) THE NEW OR ENLARGED MUNICIPALITY HAS THE LIKE RIGHTS AND OBLIGATIONS AS A PERSON TO WHOM A BUSINESS IS SOLD UNDER THIS SECTION AND WHO INTERMINGLES THE EMPLOYEES OF ONE OF HIS BUSINESSES WITH THOSE OF ANOTHER OF HIS BUSINESSES; AND
- (C) ANY TRADE UNION CONCERNED HAS THE LIKE RIGHTS AND OBLIGATIONS AS IT WOULD HAVE IN THE CASE OF THE INTERMINGLING OF EMPLOYEES IN TWO OR MORE BUSINESSES UNDER THIS SECTION. 1966, c. 76, s. 18(2).

17. SUBSECTION (7) OF SECTION 47A REFERRED TO IN SUBSECTION (10) READS AS FOLLOWS:

"BEFORE DISPOSING OF ANY APPLICATION UNDER THIS SECTION, THE BOARD MAY MAKE SUCH INQUIRY, MAY REQUIRE THE PRODUCTION OF SUCH EVIDENCE AND THE DOING OF SUCH THINGS, OR MAY HOLD SUCH REPRESENTATION VOTES, AS IT DEEMS APPROPRIATE."

18. HAVING REGARD TO THE FOREGOING PROVISIONS OF THE ACT, THE BOARD AUTHORIZES MR. A. A. MORROW, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES AND THE EMPLOYMENT STATUS OF ALL PERSONS IN THE EMPLOY OF THE BOROUGH IN A LIKE BARGAINING UNIT TO THAT REPRESENTED BY THE UNION UNDER THE COLLECTIVE AGREEMENT BETWEEN IT AND THE CORPORATION OF THE TOWNSHIP OF EAST YORK, DATED THE 28TH OF JULY, 1966.

DECISION OF BOARD MEMBER O. HODGES:

FEBRUARY 7, 1968.

I DISSENT: THE DISCRETIONARY POWER OF THE BOARD UNDER 47(A) (7) SHOULD NOT IN THIS INSTANCE BE EXERCISED TO APPOINT AN EXAMINER.

MY REASONS FOR THIS FINDING ARE:

- (1) THERE IS NO SPECIFIC REFERENCE CONCERNING EMPLOYEE STATUS BEFORE THE BOARD.
- (2) (A) THE STATUS QUESTION WAS NOT REFERRED TO THE MINISTER BY EITHER PARTY.

(B) WHILE THE STATUS QUESTION WAS RAISED BY THE EMPLOYER AT THE HEARING BEFORE THE BOARD, NO EVIDENCE WAS CALLED BY THE EMPLOYER - SURELY THE OBLIGATION OF THE EMPLOYER HERE.
- (3) THE COLLECTIVE BARGAINING AGREEMENT REACHED IN JUNE, 1966, CONTINUED TO OPERATE UNTIL DECEMBER 31ST, 1967, AND BRIDGED THE ACT OF AMALGAMATION OF THE TOWN OF LEASIDE WITH THE TOWNSHIP OF EAST YORK ON JANUARY 1ST, 1967. DURING ALL THIS TIME LOCAL 820 C.U.P.E. ACTED FOR ITS MEMBERS AND WAS RECOGNIZED BY THE BOROUGH OF EAST YORK AS THE BARGAINING AGENT ADMINISTERING THE EXISTING COLLECTIVE AGREEMENT.
- (4) THIS SAME COLLECTIVE BARGAINING AGREEMENT WAS FIRST MADE ABOUT 1959 AND WAS LAST RENEWED WITH THE AID OF CONCILIATION SERVICES IN 1966. THERE IS NO EVIDENCE TO SUGGEST ANY CHANGE IN EMPLOYEE STATUS SINCE THEN.
- (5) TO APPOINT AN EXAMINER TO ANSWER A QUESTION OF

STATUS FOR THE MOST PART LEFT TO THE PARTIES - THAT IS, WHO IS OR WHO IS NOT AN EMPLOYEE - IS IN ANY CASE PREMATURE. SUCH AN APPOINTMENT COULD FORECLOSE COLLECTIVE BARGAINING. IT WOULD BE BETTER TO PROCEED WITH CONCILIATION NOW AND LEAVE THE QUESTION OF EMPLOYEE STATUS FOR A DIRECT AND SPECIFIC APPLICATION SEEKING A DETERMINATION UNDER 79(2) BY EITHER PARTY. THE APPOINTMENT OF AN EXAMINER IS THEREFORE UNTIMELY IN MY VIEW, AND SUCH ASSISTANCE TO ONE OF THE PARTIES AT THIS TIME MAY DESTROY A LONG-STANDING COLLECTIVE BARGAINING RELATIONSHIP AND OPEN THE WAY FOR A WORK STOPPAGE BEYOND THE SCOPE OF THE LABOUR RELATIONS ACT.

MY ANSWER TO THE QUESTION PUT BY THE MINISTER WOULD THEREFORE BE "YES".

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13575-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. SCARBOROUGH CENTENARY HOSPITAL ASSOCIATION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: FEBRUARY 29, 1968.

1. BY LETTER DATED FEBRUARY 27TH, 1968, THE APPLICANT IS REQUESTING THAT THE BOARD RECONSIDER THE BARGAINING UNIT WHICH IT FOUND TO BE APPROPRIATE IN ITS DECISION OF SEPTEMBER 14TH, 1967, NAMELY "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER".
2. MORE PARTICULARLY, THE APPLICANT IS REQUESTING THAT THE DESCRIPTION OF THE BARGAINING UNIT BE REVISED TO ENCOMPASS "ALL STATIONARY ENGINEERS BELOW THE RANK OF CHIEF ENGINEER EMPLOYED BY THE SCARBORO CENTENARY HOSPITAL AT ITS PREMISES IN SCARBOROUGH".
3. THE BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD IN ITS DECISION OF SEPTEMBER 14TH, 1967 IS THE CRAFT UNIT THAT IS INVARIABLY GRANTED TO STATIONARY ENGINEERS. THE BOARD SEES NO REASON TO DEPART FROM ITS LONG ESTABLISHED PRACTICE IN THE INSTANT CASE.
4. THE REQUEST OF THE APPLICANT ACCORDINGLY IS DENIED.

13951-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INSPIRATION LIMITED, MINING SERVICES DIVISION (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES: FEBRUARY 20, 1967.

1. BY LETTER DATED JANUARY 26TH, 1968 THE RESPONDENT REQUESTED RECONSIDERATION OF THE BOARD'S DECISION IN THIS MATTER DATED JANUARY 19TH, 1968. IN ITS REQUEST THE RESPONDENT DOES NOT REFER TO EVIDENCE OR ARGUMENTS WHICH WERE NOT AVAILABLE TO IT AT THE TIME OF THE HEARING. SINCE ALL THE ISSUES RAISED BY THE RESPONDENT WERE BEFORE THE BOARD PRIOR TO THE BOARD MAKING ITS DECISION AND SINCE THE RESPONDENT HAD AN OPPORTUNITY TO MAKE ANY ARGUMENT IT WISHED TO MAKE WITH RESPECT TO SUCH ISSUES AT THE HEARING, THE BOARD DOES NOT DEEM IT ADVISABLE TO LIST THIS MATTER FOR HEARING, OR TO RECONSIDER, VARY OR REVOKE ITS DECISION OF JANUARY 19TH, 1968 IN THIS MATTER.

2. THE REQUEST OF THE RESPONDENT IS ACCORDINGLY DENIED.

DECISION OF BOARD MEMBER H. F. IRWIN: FEBRUARY 20TH, 1968.

WITHOUT IN ANY WAY DETRACTING FROM MY DISSENTING DECISION DATED JANUARY 19TH, 1968 IN WHICH I STATED THE REASONS WHY I WOULD HAVE GIVEN WEIGHT TO THE PETITION FILED BY THE EMPLOYEES AND DIRECTED A REPRESENTATION VOTE, I CONCUR IN THE ABOVE DECISION THAT BASED ON THE POLICY OF THE BOARD THE REQUEST BY THE RESPONDENT FOR REVIEW MUST BE DENIED.

14007-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. VERSAFOOD SERVICES LIMITED, INSTITUTIONS DIVISION (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES
AND J.E.C. ROBINSON.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES: FEBRUARY 26, 1968.

1. FOLLOWING THE BOARD'S DECISION IN THIS MATTER DATED JANUARY 31ST, 1968 DISMISSING THE APPLICATION, THE BOARD RECEIVED A LETTER FROM THE SOLICITORS FOR THE RESPONDENT DATED FEBRUARY 1ST, 1968 AND A LETTER IN REPLY THERETO FROM THE SOLICITORS FOR THE APPLICANT DATED FEBRUARY 12TH. WHILE THE RESPONDENT HAD NOT SPECIFIED THAT IT WAS REQUESTING A REVIEW OF THE BOARD'S DECISION PURSUANT TO SECTION 79(1) OF THE LABOUR RELATIONS ACT, IT IS APPARENT FROM THE CONTENT OF THE SUBMISSION THAT THIS WAS ITS INTENTION. THE RESPONDENT REQUESTED THE BOARD TO BAR THE APPLICANT FROM MAKING A FURTHER APPLICATION WITH RESPECT TO THIS UNIT FOR A PERIOD OF SIX MONTHS.

2. THE BOARD CONSIDERED THE REQUEST OF THE RESPONDENT AND THE SUBMISSION OF THE APPLICANT. IN OUR VIEW THE BOARD'S USUAL PRACTICE SHOULD

BE FOLLOWED IN THIS CASE AND ACCORDINGLY THE BOARD DOES NOT DEEM IT ADVISABLE TO VARY OR REVOKE ITS DECISION OF JANUARY 31ST, 1968.

DECISION OF BOARD MEMBER J.E.C. ROBINSON:

FEBRUARY 26, 1968.

WHILE I AM IN AGREEMENT WITH THE DECISION OF MY COLLEAGUES, I WISH TO MAKE CERTAIN OBSERVATIONS.

AS A RESULT OF THE INVESTIGATION BY THE FIELD OFFICER OF THE BOARD INTO THE MEMBERSHIP EVIDENCE OF THE APPLICANT, THE BOARD LISTED THIS MATTER FOR HEARING IN ORDER TO DETERMINE WHETHER THE APPLICANT UNION HAD SUBMITTED FRAUDULENT MEMBERSHIP EVIDENCE IN SUPPORT OF ITS APPLICATION.

ON THE EVE OF THE BOARD'S HEARING TO INQUIRE INTO THIS MATTER, THE UNION WITHDREW ITS APPLICATION FOR CERTIFICATION, AND THE BOARD IN ACCORDANCE WITH ITS USUAL PROCEDURE DISMISSED THE APPLICATION.

COUNSEL FOR THE RESPONDENT COMPANY NOW ASKS THAT THE BOARD BAR THE APPLICANT UNION FROM MAKING A FURTHER APPLICATION WITH RESPECT TO THE UNIT IN QUESTION FOR A PERIOD OF SIX MONTHS.

WHILE I AM IN AGREEMENT THAT THE BOARD'S USUAL PRACTICE SHOULD BE FOLLOWED OF DISMISSING THE APPLICATION AT THIS STAGE, I WISH TO STATE THAT I WOULD BE RECEPTIVE TO ANY ARGUMENT MADE BY THE COMPANY AS TO ITS PROPRIETY OR TIMELINESS IN ANY NEW APPLICATION WHICH MIGHT BE MADE BY THE APPLICANT UNION WITH RESPECT TO THIS UNIT.

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 63

13965-67-M: GUTSFELD'S WELDING EXPERT IN BUILDUP & HARDFACING 13 LONDON ST. N. HAMILTON, ONT. PHONE LI 7-3056 (COMPLAINANT) V. UNITED STEELWORKERS UNION OF AMERICA (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: A. GUTSFELD AND J. L. GAGNON FOR THE APPLICANT, NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD:

FEBRUARY 23, 1968.

1. ON DECEMBER 4, 1967 THE COMPLAINANT FILED A COMPLAINT WITH THE BOARD UNDER SECTION 63 OF THE LABOUR RELATIONS ACT. IN ITS DECISION DATED DECEMBER 8, 1967 THE BOARD FOUND THAT THE COMPLAINANT DID NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE COMPLAINT WAS ACCORDINGLY DISMISSED, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE.

2. THE BOARD RECEIVED A LETTER DATED DECEMBER 19, 1967 FROM THE COMPLAINANT WHICH IT CONSTRUED AS A REQUEST FOR REVIEW UNDER SECTION 46(4) OF THE RULES. THIS REQUEST WAS FORWARDED TO THE RESPONDENT FOR ITS COMMENTS. FOLLOWING RECEIPT OF THESE COMMENTS, THE BOARD DIRECTED THAT THE COMPLAINT BE LISTED FOR HEARING TO ENABLE THE COMPLAINANT TO SHOW CAUSE WHY HIS COMPLAINT SHOULD BE CONSIDERED FURTHER BY THE BOARD.

3. AT THE HEARING THE COMPLAINANT WAS AFFORDED EVERY OPPORTUNITY TO PRESENT EVIDENCE AND MAKE SUBMISSIONS TO THE BOARD AND THE COMPLAINANT DID IN FACT GIVE EVIDENCE IN SUPPORT OF WHICH HE FILED A NUMBER OF EXHIBITS. THE COMPLAINANT WAS ASSISTED IN HIS PRESENTATION BY A MR. GAGNON, WHO ALSO MADE SUBMISSIONS ON BEHALF OF THE COMPLAINANT. THE RESPONDENT WAS NOT REPRESENTED AT THE HEARING.

4. IT APPEARS FROM THE EVIDENCE THAT THE COMPLAINANT WAS FORMERLY AN EMPLOYEE OF THE INTERNATIONAL HARVESTER COMPANY IN HAMILTON AND WHILE IN ITS EMPLOY WAS A MEMBER OF AND A SHOP STEWARD FOR LOCAL 2868 OF THE RESPONDENT TRADE UNION. WHILE ACTING IN THIS LATTER CAPACITY THE COMPLAINANT APPARENTLY SUSTAINED AN INJURY FOR WHICH HE ULTIMATELY SOUGHT COMPENSATION FROM THE WORKMEN'S COMPENSATION BOARD. APPARENTLY THE COMPLAINANT HAS SO FAR BEEN UNSUCCESSFUL IN OBTAINING COMPENSATION AND IN THIS REGARD IT WOULD APPEAR THAT QUESTIONS HAVE ARISEN AS TO WHETHER THE COMPLAINANT VOLUNTARILY LEFT THE EMPLOY OF THE INTERNATIONAL HARVESTER COMPANY AND, FURTHER, WHETHER HE WAS ACTING AS AN EMPLOYEE WHEN HE WAS INJURED. THIS BOARD, OF COURSE, IS NOT CONCERNED DIRECTLY OR INDIRECTLY WITH ANY OF THESE MATTERS AND MUST NOT BE UNDERSTOOD AS MAKING ANY FINDING THAT THE COMPLAINANT DID OR DID NOT VOLUNTARILY LEAVE THE EMPLOYMENT OF THE INTERNATIONAL HARVESTER COMPANY, WAS OR WAS NOT AT THE MATERIAL TIMES AN EMPLOYEE AND IS OR IS NOT ENTITLED TO COMPENSATION OF ANY KIND. IT IS NECESSARY, HOWEVER, TO RELATE THE FOREGOING CIRCUMSTANCES FROM THE TESTIMONY OF THE COMPLAINANT BECAUSE THEY PROVIDE THE BACKGROUND TO THE PRESENT APPLICATION.

5. ON THE EVIDENCE BEFORE THE BOARD, THE GIST OF THE COMPLAINT IS THAT MR. GUTSFELD IS ASKING THE BOARD TO DIRECT THE RESPONDENT TO FURNISH HIM WITH A STATEMENT SHOWING THAT THE RESPONDENT PAID THE COMPLAINANT WHEN HE TOOK TIME OFF TO PERFORM HIS STEWARD'S DUTIES. THE COMPLAINANT THEN HOPES TO USE THIS STATEMENT BEFORE THE WORKMEN'S COMPENSATION BOARD TO SHOW THAT HE WAS AN EMPLOYEE. IN ADDITION, OR PERHAPS ALTERNATIVELY, MR. GUTSFELD IS ALSO COMPLAINING THAT THE RESPONDENT FAILED TO ASSIST HIM IN THE PRESENTATION OF HIS CLAIM FOR WORKMEN'S COMPENSATION.

6. AS WAS NOTED ABOVE, THE MATTER PRESENTLY BEFORE THE BOARD IS A COMPLAINT UNDER SECTION 63 OF THE LABOUR RELATIONS ACT, WHICH SECTION PROVIDES AS FOLLOWS:

63. EVERY TRADE UNION SHALL UPON THE REQUEST OF ANY MEMBER FURNISH HIM, WITHOUT CHARGE, WITH A COPY

OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR CERTIFIED BY ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS TO BE A TRUE COPY, AND, UPON THE COMPLAINT OF ANY MEMBER THAT THE TRADE UNION HAS FAILED TO FURNISH SUCH A STATEMENT TO HIM, THE BOARD MAY DIRECT THE TRADE UNION TO FILE WITH THE REGISTRAR, WITHIN SUCH TIME AS THE BOARD DETERMINES, A COPY OF THE AUDITED FINANCIAL STATEMENT OF ITS AFFAIRS TO THE END OF ITS LAST FISCAL YEAR VERIFIED BY THE AFFIDAVIT OF ITS TREASURER OR OTHER OFFICER RESPONSIBLE FOR THE HANDLING AND ADMINISTRATION OF ITS FUNDS AND TO FURNISH A COPY OF SUCH STATEMENT TO SUCH MEMBERS OF THE TRADE UNION AS THE BOARD IN ITS DISCRETION DIRECTS, AND THE TRADE UNION SHALL COMPLY WITH SUCH DIRECTION ACCORDING TO ITS TERMS. (EMPHASIS ADDED)

QUITE CLEARLY, THE STATEMENT FROM THE RESPONDENT WHICH THE COMPLAINANT IS SEEKING IS NOT SUCH AN AUDITED FINANCIAL STATEMENT AS IS ENVISAGED BY THE SAID SECTION. FURTHERMORE, WHATEVER DUTIES AND RESPONSIBILITIES THE RESPONDENT MAY OR MAY NOT HAVE HAD QUA THE COMPLAINANT (AND WE MAKE NO FINDING AS TO WHAT THESE DUTIES AND RESPONSIBILITIES WERE OR AS TO WHETHER THEY WERE OR WERE NOT FULFILLED) THE BOARD, IN AN APPLICATION OF THE KIND PRESENTLY BEFORE IT, HAS NO JURISDICTION TO ORDER THE RESPONDENT TRADE UNION TO ASSIST THE COMPLAINANT IN PRESSING HIS CLAIM BEFORE THE WORKMEN'S COMPENSATION BOARD. THE ONTARIO LABOUR RELATIONS BOARD'S ONLY POWER AS SET OUT IN SECTION 63 IS TO DIRECT THE TRADE UNION TO FILE AN AUDITED FINANCIAL STATEMENT WITH THE REGISTRAR AND TO FURNISH A COPY OF SUCH STATEMENT TO SUCH MEMBERS OF THE TRADE UNION AS THE BOARD IN ITS DISCRETION DIRECTS. THE COMPLAINANT, HOWEVER, IS NOT SEEKING SUCH A STATEMENT FROM THE RESPONDENT.

7. IN THE RESULT, THEN, THE BOARD FINDS THAT IT HAS NO JURISDICTION UNDER SECTION 63 TO GIVE THE RELIEF WHICH THE COMPLAINANT IS SEEKING. IT THEREFORE BECOMES UNNECESSARY TO CONSIDER WHETHER THE COMPLAINANT IS SUCH A PERSON AS WOULD IN ANY EVENT BE ENTITLED TO RELIEF UNDER SECTION 63, THAT IS, WHETHER HE IS PRESENTLY A MEMBER OF THE RESPONDENT TRADE UNION.

8. IN HIS REQUEST FOR REVIEW, THE COMPLAINANT STATED AS FOLLOWS:

IN NOVEMBER 1967, THE RESPONDENTS HAVE ESTABLISHED WITH ME FULL EVIDENCE IN WRITING, TO ALLEGED VIOLATIONS OF THE SECTION 10 OF THE ACT.

MY COMPLAINT UNDER THIS SECTION IS FILED WITH THE BOARD SINCE 1962. AND IN DUE OF NOW ESTABLISHED EVIDENCE TO VIOLATION OF THE ACT I WISH TO REOPEN NOW MY COMPLAINT. YOUR FILE #5187-62-U.

THESE STATEMENTS REFER TO A COMPLAINT FILED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT ALLEGING THAT THE COMPLAINANT HAD BEEN DEALT WITH CONTRARY TO THE PROVISIONS OF SECTIONS 10 AND 59A OF THE SAID ACT. THESE MATTERS WERE DEALT WITH BY A DIFFERENTLY CONSTITUTED DIVISION OF THE BOARD WHICH HELD, AMONG OTHER THINGS, THAT SECTION 10 OF THE ACT HAD NO RELEVANCE TO A CLAIM UNDER SECTION 65 OF THE ACT. IT WAS POINTED OUT TO THE COMPLAINANT AT THE HEARING OF THE PRESENT COMPLAINT THAT THIS DIVISION OF THE BOARD COULD NOT ENTER-TAIN HIS REQUEST TO RE-OPEN THE EARLIER COMPLAINT AND, FURTHER, THAT IN ANY EVENT EVEN IF THE COMPLAINANT HAD NEW EVIDENCE, THIS WOULD NOT CHANGE THE FINDING OF THE PREVIOUS DIVISION THAT SECTION 10 HAD NO RELEVANCE TO A CLAIM UNDER SECTION 65 OF THE ACT.

9. IN THE RESULT, THEREFORE, THE BOARD'S DECISION IN THIS MATTER DATED DECEMBER 8, 1967 DISMISSING THE COMPLAINT IS CONFIRMED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

14083-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. STEDS LIMITED (RESPONDENT).

5. THE JOB SITE AFFECTED BY THIS APPLICATION IS SITUATED IN PEMBROKE. IN SUCH CIRCUMSTANCES THE BOARD WOULD NORMALLY GRANT A CERTIFICATE FOR THE GEOGRAPHIC AREA CONSISTING OF THE COUNTY OF RENFREW, WITH THE EXCEPTION OF THE TOWNSHIP OF McNAB. HOWEVER, IN ITS DECISION, DATED DECEMBER 18, IN CITY CONCRETE FORMING LIMITED, BOARD FILE 13693-67-R, THE BOARD INDICATED THAT THE TOWNSHIP OF McNAB SHOULD NO LONGER BE EXCEPTED FROM THE AREA.

(FEBRUARY 5, 1968).

14125-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. D. A. SINCLAIR CONSTRUCTION LIMITED (RESPONDENT).

3. AFTER THE APPLICATION WAS FILED WITH THE BOARD, THE RESPONDENT NOTIFIED THE BOARD THAT THE JOB HAS SINCE CLOSED DOWN AND THAT CONSEQUENTLY IT WAS UNABLE TO POST THE NOTICES TO EMPLOYEES. IN THESE CIRCUMSTANCES, THE BOARD EXTENDED THE TERMINAL DATE AND THE EMPLOYEES AFFECTED BY THE APPLICATION WERE SERVED INDIVIDUALLY BY REGISTERED MAIL. THE FACT THAT THE JOB HAS CLOSED DOWN AFTER THE DATE OF THE MAKING OF THE APPLICATION HAS NOT BEEN CONSIDERED A VALID REASON FOR NOT ISSUING A CERTIFICATE IF ONE IS OTHERWISE WARRENTED, SEE TRAUGOTT CONSTRUCTION LIMITED O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 920.

(FEBRUARY 19, 1968).

STATISTICAL TABLES FOR FEBRUARY 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		FEBRUARY 1968	1ST 11 MONTHS OF FISCAL YEAR 1967-68	1966-67
I.	CERTIFICATION	81	839	853
II.	DECLARATION TERMINATING BARGAINING RIGHTS	4	84	37
III.	DECLARATION OF SUCCESSOR STATUS	8	24	14
IV.	DECLARATION THAT STRIKE UNLAWFUL	3	34	29
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	1	13	1
VI.	CONSENT TO PROSECUTE	7	90	84
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	18	161	123
VIII.	MISCELLANEOUS	<u>6</u>	<u>67</u>	<u>60</u>
TOTAL		<u>128</u>	<u>1312</u>	<u>1201</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		FEBRUARY 1968	1ST 11 MONTHS OF FISCAL YEAR 1967-68	1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		68	797	865

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	FEBRUARY 1968	1ST 11 MTHS OF FISCAL YEAR 1967-68	1966-67
I. CERTIFICATION	66	853	873
II. DECLARATION TERMINATING BARGAINING RIGHTS	8	86	36
III. DECLARATION OF SUCCESSOR STATUS	2	15	10
IV. DECLARATION THAT STRIKE UNLAWFUL	1	32	28
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	12	1
VI. CONSENT TO PROSECUTE	4	91	74
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	4	158	106
VIII. MISCELLANEOUS	<u>6</u>	<u>67</u>	<u>65</u>
TOTAL	<u>91</u>	<u>1314</u>	<u>1193</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION

<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
<u>FEBRUARY</u>	<u>1ST 11 MTHS</u>	<u>FISCAL YR.</u>	<u>FEBRUARY</u>	<u>1ST 11 MTHS</u>	<u>FISCAL YR.</u>
<u>1968</u>	<u>1967-68</u>	<u>1966-67</u>	<u>1968</u>	<u>1967-68</u>	<u>1966-67</u>

I. CERTIFICATION

GRANTED	44	597	638	2166	25137	3067
DISMISSED	15	187	155	347	10797	12104
WITHDRAWN	7	69	80	183	1663	1271
TOTAL	<u>66</u>	<u>853</u>	<u>873</u>	<u>2696</u>	<u>37597</u>	<u>16442</u>

II. TERMINATION
OF BARGAINING
RIGHTS

GRANTED	5	39	23	100	1048	636
DISMISSED	2	44	12	36	1008	297
WITHDRAWN	1	3	1	12	53	203
TOTAL	<u>8</u>	<u>86</u>	<u>36</u>	<u>148</u>	<u>2109</u>	<u>1136</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		FEBRUARY	1ST 11 MONTHS OF FISCAL YR.	
		1968	1967-68	1966-67
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	3	5
	DISMISSED	-	3	2
	WITHDRAWN	<u>1</u>	<u>26</u>	<u>21</u>
	TOTAL	<u>1</u>	<u>32</u>	<u>28</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	1	-
	WITHDRAWN	<u>-</u>	<u>11</u>	<u>1</u>
	TOTAL	<u>-</u>	<u>12</u>	<u>1</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	6	8
	DISMISSED	1	12	14
	WITHDRAWN	<u>3</u>	<u>73</u>	<u>51</u>
	TOTAL	<u>4</u>	<u>91</u>	<u>73</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	<u>FEBRUARY</u> <u>1968</u>	<u>1ST 11 MONTHS</u> <u>1967-68</u>	<u>FISCAL YEAR</u> <u>1966-67</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	20	19
POST-HEARING VOTE	5	43	34
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	12	9
POST-HEARING VOTE	3	36	53
BALLOTS NOT COUNTED	-	3	-
TOTAL	<u>11</u>	<u>114</u>	<u>115</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED
OF BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	<u>FEBRUARY</u> <u>1968</u>	<u>1ST 11 MONTHS</u> <u>1967-68</u>	<u>FISCAL YEAR</u> <u>1966-67</u>
*RESPONDENT UNION SUCCESSFUL	-	1	4
RESPONDENT UNION UNSUCCESSFUL	<u>2</u>	<u>19</u>	<u>17</u>
TOTAL	<u>2</u>	<u>20</u>	<u>21</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

RCH, 1968



ONTARIO

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ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MARCH 1968

BARGAINING AGENTS CERTIFIED DURING MARCH

NO VOTE CONDUCTED

13936-57-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U., A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CENTRE GREY GENERAL HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MARKDALE REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ~~ELECTRO~~-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

(SEE INDEXED ENDORSEMENT PAGE 1172).

14087-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. JOHN INGLIS CO. LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN SALT FLEET TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY A CERTIFICATE OF THE BOARD ISSUED TO INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 772 DATED FEBRUARY 13TH, 1968." (117 EMPLOYEES IN THE UNIT).

14123-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. BELMONT PLASTERING CO. (RESPONDENT) V. LOCAL 117, OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD,

RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN," (11 EMPLOYEES IN THE UNIT).

14144-67-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.-CIO-CLC. (APPLICANT) V. LUDGER LARABIE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS SAWMILL AND BUSH OPERATIONS IN THE DISTRICT OF COCHRANE, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

14162-67-R: THE LUMBER & SAWMILL WORKERS UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA-A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. KOKOTOW LUMBER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SAWMILL AT KENOGAMI, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (30 EMPLOYEES IN THE UNIT).

14163-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. D & M CARTAGE & MOVING (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

14164-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COGHILL MOTOR SALES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

14167-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #2307 (APPLICANT) V. ALP CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

14168-67-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. BROWN'S CONCRETE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWNSHIP OF BRODER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14173-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. ALP CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14174-67-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 636 (APPLICANT) V. UNITED CANNERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CONSECON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

14175-67-R: GENERAL DRIVERS LOCAL 989 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. OTTAWA VALLEY GRAIN PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AND WORKING OUT OF THE TOWN OF RENFREW, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (21 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14181-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. DIBBLEE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF MULDREW AND DUBLIN IN THE DISTRICT OF SUDBURY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT DRILLERS AND DRILLERS HELPERS ARE INCLUDED IN THE TERM "CONSTRUCTION LABOURERS".

14190-67-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT)
V. LAGNON MANUFACTURING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT LOCATED AT ADELAIDE STREET WEST, TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, SALES STAFF, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (43 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14193-67-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, LOCAL 636 (APPLICANT) V. UNITED CANNERS LIMITED (RESPONDENT)
V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

14195-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SKIL CORPORATION (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 1190 CALEDONIA ROAD IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (62 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENTS OF THE PARTIES AND THE BOARD'S USUAL PRACTICE IN SIMILAR CASES).

14196-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. AUTOMATIC SCREW MACHINE PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (51 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14197-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. GAINSBOROUGH KITCHENS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 208 BARTLEY DRIVE, TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (42 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED BY THE RESPONDENT AS DRIVERS ARE INCLUDED IN THE BARGAINING UNIT.

14205-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. INSPIRATION LIMITED (UTILITY CONSTRUCTION DIVISION)
(RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (19 EMPLOYEES IN THE UNIT).

14206-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KENNETH S. FRASER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MARKHAM TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

14207-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. MUSKOKA CHARCOAL COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF MUSKOKA CHARCOAL COMPANY AT HUNTSVILLE, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, SALES STAFF, CLERKS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (27 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14208-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. CON ENG LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14209-67-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. H. CHOUINARD (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14213-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 880 (APPLICANT) V. AUTO HAULWAY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS TERMINAL LOCATED AT HIGHWAY NO. 4 IN THE TOWNSHIP OF SOUTHWOLD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

14214-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL - CIO - CLC (APPLICANT) V. THE BOARD OF TRUSTEES OF THE COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS TILBURY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (2 EMPLOYEES IN THE UNIT).

14215-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL-CIO-CLC (APPLICANT) V. TILBURY DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (4 EMPLOYEES IN THE UNIT).

14216-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL-CIO-CLC (APPLICANT) V. BOARD OF TRUSTEES FOR THE COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS BELLE RIVER (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (2 EMPLOYEES IN THE UNIT).

14225-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TIMMINS HOME FOR THE AGED, GOLDEN MANOR (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (69 EMPLOYEES IN THE UNIT).

14226-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) V. DREW BROWN LTD. (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

14234-67-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 540 (APPLICANT) V. INTERNATIONAL MACHINE & TOOL COMPANY (RESPONDENT). (7 EMPLOYEES IN THE UNIT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SALTFLEET, IN THE COUNTY OF WENTWORTH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

14240-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. PROGRESS PLASTERING LTD. (RESPONDENT) V. OPERATIVE PLASTERERS' & CEMENT MASONS' INT. ASSOC. LOCAL 117 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

14242-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. DODGE CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY, AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

14249-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES AT CORNWALL, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT. (11 EMPLOYEES IN THE UNIT).

14252-67-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. PERIMETER INDUSTRIES CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE CITY OF PETERBOROUGH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

14254-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. PRESIDENT MOTOR HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT HOTEL, DINING ROOM, KITCHEN, AND HOUSEKEEPING MANAGERS, PERSONS ABOVE THESE RANKS, AND OFFICE, REGISTRATION DESK AND TELEPHONE STAFF, MAINTENANCE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (42 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14257-67-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. DAILY PACKET AND TIMES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORILLIA ENGAGED IN PRESS ROOM WORK, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14270-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. J. HULLEMAN CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14272-67-R: PATTERNMAKERS' ASSOCIATION OF HAMILTON & VICINITY (AN AFFILIATE OF THE PATTERNMAKERS' LEAGUE OF N.A.) (APPLICANT) V. RONALD C. GOPSILL - ENGINEERING PATTERNS & MODELS (RESPONDENT).

UNIT: "ALL PATTERNMAKERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT THE OWNER." (2 EMPLOYEES IN THE UNIT).

14283-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. ABE DICK MASONRY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (3 EMPLOYEES IN THE UNIT).

14298-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597 (APPLICANT) V. HAROLD R. STARK PLUMBING, HEATING AND ENGINEERING LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14314-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE MITCHELL CONSTRUCTION COMPANY (CANADA) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14328-67-R: THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. WESTMACOTT PAINT & GLASS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

13878-67-R: HOTEL & RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, LOCAL 197, AFL-CIO-C.L.C., HAMILTON, ONTARIO (APPLICANT) V. GREENWOLF HOTEL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT OWNERS, MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

14044-67-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. NORTHERN & CENTRAL GAS CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN TIMMINS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5

14072-67-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. GENERAL CONCRETE LTD., AJAX DIVISION (RESPONDENT) V. UNITED CEMENT, LIME & GYPSUM WORKERS INTERNATIONAL UNION, LOCAL UNION No. 377 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT AT AJAX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND TEAMSTERS' LOCAL UNION No. 230." (49 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	37
NUMBER OF PERSONS WHO CAST BALLOTS	38
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	33
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	4

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MARCH

NO VOTE CONDUCTED

14010-67-R: INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. M.Z.M. LABORATORY LIMITED (RESPONDENT). (14 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1174).

14066-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. VITALI BROS. LTD. (RESPONDENT) V. LOCAL 117 O.P. C.M.I.A. (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

14068-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO: CLC. (APPLICANT) V. PARK HOUSE (RESPONDENT). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1176).

14104-67-R: UNITED GLASS & CERAMIC WORKERS OF N. AMERICA, AFL-CIO-CLC (APPLICANT) V. DOMTAR CONSTRUCTION MATERIALS LIMITED (RESPONDENT). (236 EMPLOYEES).

14105-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. BRANTFORD PACKERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (4 EMPLOYEES).¹

14155-67-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 117 (APPLICANT) V. ROSELAWN PLASTERING Co. LTD. (RESPONDENT) (15 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1178).

14156-67-R: OPERATIVE PLASTERERS & CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 117 (APPLICANT) V. GOLDSTAR PLASTERING Co. LTD. (RESPONDENT). (10 EMPLOYEES).

14157-67-R: LOCAL 90, INT'L. BRO. OF PULP, SULPHITE & PAPER MILL WORKERS (APPLICANT) V. ANSON GENERAL HOSPITAL (RESPONDENT) V. OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 151 (INTERVENER #1) V. INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (INTERVENER #2). (25 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1182).

14159-67-R: EMPLOYEES ASSOCIATION, OTTAWA MARKETING TERMINAL BP CANADA LTD. (APPLICANT) V. BP CANADA LTD. (RESPONDENT). (13 EMPLOYEES).

14236-67-R: OTTAWA PRINTING SPECIALTIES & PAPER PRODUCTS UNION No. 456 (APPLICANT) V. MORTIMER LIMITED (RESPONDENT) V. LOCAL 224, LITHOGRAPHERS & PHOTOENGRAVERS INT'L UNION (INTERVENER #1) V. LOCAL UNION No. 173, INTERNATIONAL BROTHERHOOD OF BOOKBINDERS (INTERVENER #2) V. OTTAWA TYPOGRAPHICAL UNION No. 102 (INTERVENER #3). (43 EMPLOYEES).

14267-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. MARITIME-ONTARIO FREIGHT LINES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (7 EMPLOYEES).

14271-67-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GRANITE CLUB LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER). (9 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 1190).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

14098-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. INDUSTRIAL STEAM LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE OPERATION AND MAINTENANCE OF THE CENTRAL STEAM PLANT OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT THE CHIEF ENGINEER." (12 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	7

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13492-67-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT, AND GENERAL WORKERS (APPLICANT) V. R. E. LAW CRUSHED STONE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS QUARRY AND PLANTS IN THE TOWNSHIP OF WAINFLEET, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (133 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	81
NUMBER OF PERSONS WHO CAST BALLOTS	81
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	19
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	61

(SEE INDEXED ENDORSEMENT PAGE 1158).

13918-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V.
CAMPBELL SOUP COMPANY LTD. (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS
THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT
METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS
ABOVE THE RANK OF CHIEF ENGINEER." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	6

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MARCH

14078-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. BRO-
DART INDUSTRIES (CANADA) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS). (13 EMPLOYEES).

14114-67-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 879, AFFILIATED WITH
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA (APPLICANT) V. ADAM CLARK COMPANY LIMITED
(RESPONDENT). (2 EMPLOYEES).

14183-67-R: LOCAL 403, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN
OF NORTH AMERICA (APPLICANT) V. CANADIAN CANNERS LIMITED (RESPONDENT).
(6 EMPLOYEES).

14258-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796
(APPLICANT) V. THE CANADA WOOD SPECIALTY CO. LTD. (RESPONDENT).
(4 EMPLOYEES).

14292-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. DIBBLEE CONSTRUCTION CO. LTD. (RESPONDENT). (3 EMPLOYEES)

14293-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE TORONTO IRON WORKS, LIMITED (RESPONDENT) V. UNITED STEELWORKERS OF AMERICA, ON BEHALF OF LOCAL 3599 (INTERVENER). (5 EMPLOYEES).

14308-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (COMPLAINANT) V. THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT). (2 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING MARCH

14021-67-R: MRS. THERESA GAUDETTE (APPLICANT) V. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION A.F.L. C.I.O. C.L.C. (RESPONDENT) V. NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF NEW GAIN LIMITED CARRYING ON BUSINESS AS SOO CLEANERS AT SAULT STE. MARIE, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, DRIVER SALESMEN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS

9

NUMBER OF BALLOTS MARKED IN FAVOUR
OF RESPONDENT

1

NUMBER OF BALLOTS MARKED AGAINST
RESPONDENT

8

14022-67-R: GERALD NELSON MORROW (APPLICANT) V. LOCAL UNION 530, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, A.F.L. - C.I.O. - C.L.C. (RESPONDENT) V. SARNIA BROADCASTING (1964) LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF SARNIA BROADCASTING (1964) LIMITED AT SARNIA, SAVE AND EXCEPT STATION MANAGER, PERSONS ABOVE THE RANK OF STATION MANAGER, PROGRAM MANAGER, CHIEF ENGINEER, BOOKKEEPER, SALES MANAGER, SALESMEN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

11

NUMBER OF PERSONS WHO CAST BALLOTS

11

NUMBER OF BALLOTS MARKED IN FAVOUR
OF RESPONDENT

3

NUMBER OF BALLOTS MARKED AGAINST
RESPONDENT

8

14117-67-R: GENERAL MOTORS PRODUCTS OF CANADA, LIMITED (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (24 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1191).

14241-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. LABOURER'S ASSOCIATION OF SMITH'S FALLS (RESPONDENT) V. DODGE CONSTRUCTION COMPANY LIMITED (INTERVENER). (10 EMPLOYEES). (GRANTED).

14330-67-R: HOWARD S. CLARK CONT. LTD. (PROPERLY KNOWN AS HOWARD S. CLARK CONSTRUCTION) (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (RESPONDENT). (1 EMPLOYEE). (DISMISSED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

MARCH

14154-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. LOCAL UNION 2562 (APPLICANT) V. PARQUET FLOORING COMPANY LIMITED (RESPONDENT) V. HAMILTON GENERAL WORKERS UNION, LOCAL 202, CANADIAN LABOUR CONGRESS (PREDECESSOR TRADE UNION). (GRANTED).

14199-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. FACTORY AUTO BODY LIMITED (RESPONDENT) V. SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

14200-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. GAETZ FORD SALES LIMITED (RESPONDENT) V. SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

14201-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. WELCOME MOTORS LIMITED (RESPONDENT) V. SAULT STE. MARIE GENERAL WORKERS UNION, LOCAL 1644, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

14202-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. LLOYD JOHNSON'S TOWN AND COUNTRY AUTO BODY LIMITED (RESPONDENT) V. SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

14203-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. BOSTON BROTHERS LIMITED (RESPONDENT) V. SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

14243-67-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. UNION GAS COMPANY OF CANADA, LIMITED (RESPONDENT) V. NATIONAL UNION OF NATURAL GAS WORKERS, LOCAL 156, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

MARCH

14311-67-U: FRASER-BRACE ENGINEERING COMPANY, LIMITED, SUDBURY, ONTARIO (APPLICANT) V. MAXSIM ANDRIC ET AL (SEE ATTACHED LIST) (RESPONDENTS). (WITHDRAWN).

14228-67-U: STRUCTURAL FORMWORK LIMITED (APPLICANT) V. THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY ACTING ON BEHALF OF LOCALS #27, #3233, #681, #3227, #666, #1963 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

MARCH

14223-67-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 1687 (APPLICANT) V. BEAMER AND LATHROP LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1196).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING MARCH

14224-67-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 1687 (APPLICANT) V. BEAMER LATHROP LIMITED (RESPONDENT). (WITHDRAWN).

14229-67-U: STRUCTURAL FORMWORK LIMITED (APPLICANT) V. FRED J. LEACH AND THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY ACTING ON BEHALF OF LOCALS #27, #3233, #681, #3227, #666, #1963 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENTS). (WITHDRAWN).

14289-67-U: THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. PROGRESS PLASTERING LIMITED, AND JOSEPH SCRIGNUOLI (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1199).

14312-67-U: FRASER-BRACE ENGINEERING COMPANY, LIMITED, SUDBURY, ONTARIO (APPLICANT) V. MAXSIM ANDRIC ET AL (SEE ATTACHED LIST) (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED
OF DURING MARCH

13812-67-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. R. E. LAW CRUSHED STONE LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1200).

13984-67-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. FABRICON MANUFACTURING LIMITED (RESPONDENT). (DISMISSED).

14040-67-U: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (COMPLAINANT) V. FABRICON MANUFACTURING LIMITED (RESPONDENT). (DISMISSED).

14094-67-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC. (COMPLAINANT) V. PARK HOUSE (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1203).

14122-67-U: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (COMPLAINANT) V. JOHN LALONDE, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF J & C MACHINERY MOVERS (RESPONDENT). (WITHDRAWN).

14129-67-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (COMPLAINANT) V. NORMAC EQUIPMENT CONSTRUCTION LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1207).

14158-67-U: CANADIAN UNION OF OPERATING ENGINEERS (COMPLAINANT) V. TORONTO MEDICAL ARTS BUILDING COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

14178-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. PARAMOUNT GASKET CO. LTD. (RESPONDENT). (WITHDRAWN).

- AND -

14179-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. PARAMOUNT GASKET CO. LTD. (RESPONDENT). (WITHDRAWN).

- AND -

14180-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (COMPLAINANT) V. PARAMOUNT GASKET CO. LTD. (RESPONDENT). (WITHDRAWN).

(THE ABOVE APPLICATIONS ARE CONSOLIDATED).

14192-67-U: BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 264 (COMPLAINANT) V. A & P FOOD STORES (RESPONDENT). (WITHDRAWN).

14210-67-U: HOTEL AND RESTAURANT EMPLOYEES, UNION, LOCAL 743, AFFILIATED WITH: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, AFL-CIO, CANADIAN LABOUR CONGRESS AND W. & D. L. C. (COMPLAINANT) V. HOLIDAY INN (RESPONDENT). (WITHDRAWN).

14211-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. KENNETH S. FRASER CO. LTD. (RESPONDENT). (WITHDRAWN).

14217-67-U: COMMUNICATIONS WORKERS OF AMERICA (AFL-CIO, CLC) (COMPLAINANT) V. AMPLITROL ELECTRONICS LIMITED (RESPONDENT). (WITHDRAWN).

14279-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GENERAL FREEZER LIMITED (RESPONDENT). (WITHDRAWN).

14280-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GENERAL FREEZER LIMITED (RESPONDENT). (WITHDRAWN).

14356-67-U: ANTON F. GUTSFELD (COMPLAINANT) V. INTERNATIONAL HARVESTER COMPANY - HAMILTON WORKS AND UNITED STEELWORKERS UNION OF AMERICA - UNION OFFICERS AND UNION OFFICERS FROM THE LOCAL 2868 OF NAMED UNION (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 1209).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

14102-67-M: CANADA BUILDING MATERIALS LIMITED, WOODBRIDGE, ONTARIO AND CONCRETE BLOCK AND BRICKWORKERS ASSOCIATION, LOCAL 33 AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (JOINT APPLICANTS) V. TEAMSTERS LOCAL UNION No. 230 READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS; INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS (INTERVENER). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 1210).

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT)

14218-67-M: EDWIN A RICHARDSON (COMPLAINANT) V. LOCAL 1285 UNITED AUTOMOBILE WORKERS UNION (RESPONDENT). (DISMISSED).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

14001-67-M: THE LUMBER AND SAWMILL WORKERS UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (TRADE UNION) V. RAYMOND COTE (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 1211).

14227-67-M: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (TRADE UNION) V. INDUSTRIAL-MINE INSTALLATIONS LIMITED (EMPLOYER). (GRANTED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13536-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA LOCAL 905 (APPLICANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1217).

13701-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79 (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1218).

13766-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED, ST. THOMAS ASSEMBLY PLANT (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (INTERVENER). (REQUEST DENIED).

13793-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED, ST. THOMAS ASSEMBLY PLANT (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1220).

13786-67-R: CANADIAN TEXTILE COUNCIL (APPLICANT) V. THE WATSON MANUFACTURING COMPANY OF PARIS LIMITED (RESPONDENT) V. TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (INTERVENER). (REQUEST DENIED).

13958-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. THE NIAGARA WIRE WEAVING COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1221).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - TERMINATION

14128-67-R: HECTOR POIRIER (APPLICANT) V. CANADIAN CONSTRUCTION WORKERS' UNION DIVISION No. 1 N. C. C. L. (RESPONDENT). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

13902-67-U: JAMES SPEIRS (COMPLAINANT) V. A. M. WOOLFREY, OSHAWA, GENERAL MOTORS LTD. (AUTOMOTIVE INDUSTRY) T.H. GLEN, TORONTO, BRITISH AMERICAN OIL CO. LTD. (OIL & CHEMICAL CO.) K.G. COOKE, HAMILTON, CANADIAN WESTINGHOUSE LTD. (ELECTRICAL INDUSTRY) L.G. KERR, DRYDEN, DRYDEN PAPER CO. LTD. (PULP & PAPER INDUSTRY) N. H. WAGE, COPPER CLIFF, INTERNATIONAL NICKEL (MINING INDUSTRY) JOHN LAWLER, HAMILTON, STEEL CO. OF CANADA (STEEL INDUSTRY) J.L. MCINTYRE, SAULT STE. MARIE, ALGOMA STEEL CO. LTD. (STEEL INDUSTRY) (RESPONDENTS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1221).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79A

13991-67-M: THE EAST YORK CIVIC FOREMEN'S UNION No. 820 (TRADE UNION) V. BOROUGH OF EAST YORK (FORMERLY THE CORPORATION OF THE TOWNSHIP OF EAST YORK) (EMPLOYER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 1224).

INDEXED ENDORSEMENTS - CERTIFICATION

12492-67-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT, AND
GENERAL WORKERS (APPLICANT) V. R. E. LAW CRUSHED STONE LIMITED
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: D. NICHOLSON AND G. R. BECKWITH FOR THE
APPLICANT, E. L. STRINGER, F. C. LAW AND G. SHERK FOR THE
RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN: MARCH 19, 1968.

1. THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING FOR THE
PURPOSE OF ENTERTAINING THE APPLICANT'S CHARGES WITH RESPECT TO THE
REPRESENTATION VOTE HELD ON DECEMBER 14TH, 1967. AT THE BOARD HEARING
ON JANUARY 30TH, 1968, THE APPLICANT ADDUCED EVIDENCE IN SUPPORT OF ITS
CHARGES.

2. WAYNE WINGER WHO IS EMPLOYED BY THE RESPONDENT AS A TRUCK DRIVER
GAVE THE FOLLOWING TESTIMONY. DURING THE PERIOD BETWEEN WHEN THE BOARD
DIRECTED THE VOTE (NOVEMBER 15TH, 1967) AND THE TAKING OF THE VOTE,
JAMES BEACH APPROACHED HIM ON NUMEROUS OCCASIONS ON THE PREMISES OF THE
RESPONDENT DURING WORKING HOURS AND ENDEAVOURED TO ENLIST HIS SUPPORT
AGAINST THE APPLICANT UNION. BEACH IS EMPLOYED AS A CLAM OPERATOR.
HIS JOB IS TO FEED SAND AND GRAVEL INTO THE BIN WHICH LEADS TO THE RES-
PONDENT'S ASPHALT PLANT. THE DRIVERS TRANSPORT SAND AND GRAVEL BY
TRUCK TO THE BIN. WINGER GENERALLY HAULS ABOUT HALF A DOZEN LOADS A
DAY TO THE BIN. IT WAS ON SOME OF THESE OCCASIONS THAT BEACH LEFT HIS
CLAM AND SPOKE TO WINGER ABOUT THE UNION. ONE TIME BEACH TALKED TO HIM
FOR APPROXIMATELY THREE QUARTERS OF AN HOUR. IN THE PERFORMANCE OF HIS
JOB BEACH IS NOT REQUIRED TO CONTINUALLY OPERATE THE CLAM. MORE PARTICULARLY,
WHEN THE BIN IS FULL BEACH CAN STOP OPERATING IT FOR A PERIOD OF
TIME. ALTHOUGH WINGER STATED IN CROSS-EXAMINATION THAT BEACH MIGHT NOT
NEED TO RUN THE CLAM FOR AS LONG AS AN HOUR, WE ARE INCLINED TO ACCEPT
WINGER'S EVIDENCE IN EXAMINATION-IN-CHIEF WHICH INDICATES THAT THE
PERIODS DURING WHICH BEACH DID NOT HAVE TO OPERATE THE CLAM WERE OF
CONSIDERABLY SHORTER DURATION. ON ONE OCCASION WHEN BEACH WAS TALKING
TO HIM, BEACH ALLOWED THE BIN TO RUN DRY. BEACH'S WORK LOCATION CAN
BE SEEN FROM THE OFFICE ALTHOUGH IT APPEARS FROM WINGER'S EVIDENCE THAT
THE OFFICE IS SOME DISTANCE AWAY.

3. EDWARD AYRES, WHO IS AN EMPLOYEE OF THE RESPONDENT, TESTIFIED AS
FOLLOWS. DURING THE PERIOD LEADING UP TO THE TAKING OF THE VOTE,
BEACH OFTEN LEFT HIS JOB ON THE CLAM DURING WORKING HOURS AND CIRCULATED
AROUND THE QUARRY TALKING TO EMPLOYEES AGAINST THE UNION. ONE MORNING
AYRES HEARD BEACH TELLING SOME EMPLOYEES THAT IF THE UNION "GOT IN" THE
PLANT WOULD BE SHUT DOWN. IN MOVING ABOUT THE QUARRY TO TALK TO EMPLOY-
EES BEACH SOMETIMES DROVE A TRUCK TO GET TO VARIOUS LOCATIONS. EMPLOYEES

ARE NOT ALLOWED TO LEAVE THEIR WORK STATIONS WITHOUT THE PERMISSION OF THEIR FOREMEN. FURTHER, NO EMPLOYEES EXCEPT DRIVERS ARE PERMITTED TO USE THE RESPONDENT'S TRUCKS. ON OCCASION AN EMPLOYEE, OTHER THAN A DRIVER, MIGHT BE ALLOWED TO TAKE A TRUCK TO GET PARTS, BUT ONLY WITH THE CONSENT OF HIS FOREMAN. THE OPERATION OF THE CLAM WAS MORE OR LESS CONTINUOUS DEPENDING ON THE PRODUCTION OF THE ASPHALT PLANT. ON OCCASION BEACH DOES NOT HAVE ANY WORK TO DO FOR PERHAPS TWENTY MINUTES.

4. FERNAND NADEAU, AN EMPLOYEE OF THE RESPONDENT, TESTIFIED THAT ON DECEMBER 13TH, A DAY PRIOR TO THE VOTE, HE OVERHEARD A CONVERSATION BETWEEN OLIVER HOUSE AND BEACH IN WHICH THE LATTER MADE DEROGATORY REMARKS ABOUT THE UNION. MORE PARTICULARLY, ACCORDING TO NADEAU, HE HEARD BEACH TELL HOUSE THAT THE UNION WAS "NO GOOD" AND THAT IT JUST "COLLECTED MONEY" AND "MADE STRIKES". NADEAU FURTHER TESTIFIED THAT BEACH WAS AT THE POLL WHEN HE (NADEAU) CAST HIS BALLOT.

5. BEACH APPEARED AT THE ORIGINAL HEARING IN THIS CASE AS A REPRESENTATIVE OF A GROUP OF EMPLOYEES WHO FILED PETITIONS EXPRESSING OPPOSITION TO THE APPLICATION OF THE APPLICANT. AT THE HEARING BEACH GAVE TESTIMONY CONCERNING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITIONS. HIS EVIDENCE IN THIS REGARD IS SET OUT IN THE BOARD'S DECISION IN THIS MATTER DATED NOVEMBER 15TH, 1967. BEACH WAS SELECTED BY THE RESPONDENT TO BE ITS SCRUTINEER AT THE TAKING OF THE VOTE ON DECEMBER 14TH, 1967 AND SIGNED THE CERTIFICATION OF CONDUCT OF ELECTION AS THE SCRUTINEER FOR THE RESPONDENT.

6. IT APPEARS FROM THE EVIDENCE, WHICH IS UNDISPUTED, THAT BEACH LEFT HIS JOB WITH SOME FREQUENCY, CIRCULATED AMONG THE EMPLOYEES AT THE QUARRY DURING WORKING HOURS, SOMETIMES USING A COMPANY TRUCK TO GET FROM ONE LOCATION TO ANOTHER. THE EVIDENCE INDICATES THAT HIS PURPOSE IN MOVING ABOUT THE RESPONDENT'S PREMISES AND TALKING TO EMPLOYEES WAS TO CAMPAIGN AGAINST THE APPLICANT UNION. BEACH'S APPARENT EASY MOBILITY SUGGESTS THAT HIS ACTIVITIES WERE CARRIED ON WITH AT LEAST THE TACIT CONSENT OF THE RESPONDENT. THE RESPONDENT'S SELECTION OF HIM TO BE ITS SCRUTINEER AT THE VOTE STRENGTHENS THE SUGGESTION THAT THE RESPONDENT ACQUIESCED IN HIS ACTIVITIES AGAINST THE UNION ON THE COMPANY'S TIME AND PREMISES. MORE IMPORTANTLY IT MUST HAVE SEEMED TO THE EMPLOYEES THAT BEACH'S CAMPAIGN HAD THE SUPPORT OF THE RESPONDENT.

7. IN THE DEERFIELD CONSTRUCTION LTD. CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1964, P. 538, THE BOARD EXPRESSED ITS MISGIVINGS ABOUT ACCEPTING THE RESULT OF A VOTE AS INDICATING THE TRUE WISHES OF THE EMPLOYEES CONCERNED WHEN AN EMPLOYER SELECTS AS ITS SCRUTINEER A PERSON WHO HAS REPRESENTED OBJECTORS AT THE ORIGINAL HEARING OF THE CERTIFICATION APPLICATION. THE BOARD'S DECISION READS, IN PART:

WHILE WE ARE NOT UNDULY CONCERNED WITH THE FACT THAT JOLY, THE UNION REPRESENTATIVE, WAS NOT PERMITTED TO BE PRESENT DURING THE TAKING OF THE VOTE IN QUESTION, SINCE THIS IS THE USUAL PRACTICE FOLLOWED

BY THE BOARD, WE ARE CONCERNED WITH THE FACT THAT THE PERSON WHO REPRESENTED THE OBJECTORS AT THE ORIGINAL HEARING OF THIS MATTER ACTED AS THE RESPONDENT'S SCRUTINEER DURING THE TAKING OF THE VOTE. THIS FACT ALONG WITH THE OTHER CIRCUMSTANCES OF THIS CASE INCLUDING THE PRESENCE OF AN ADDITIONAL COMPANY REPRESENTATIVE AT THE VOTE, AND THE SMALL NUMBER AND TYPE OF EMPLOYEES INVOLVED, RENDER IT UNLIKELY, IN OUR VIEW, THAT THE EMPLOYEES WOULD FEEL FREE TO EXPRESS THEIR TRUE DESIRES AT THE BALLOT BOX. IN THESE CIRCUMSTANCES, THE RESULT OF THE VOTE MUST BE SET ASIDE.

THAT CASE, THE BOARD DIRECTED THE TAKING OF A NEW REPRESENTATION VOTE. IN THE INSTANT CASE, THE BOARD MUST TAKE INTO ACCOUNT BOTH THE FACT THAT BEACH REPRESENTED THE OBJECTORS AND HIS ACTIVE ROLE IN THE CAMPAIGN AGAINST THE UNION PRIOR TO THE TAKING OF THE VOTE WITH WHAT MUST HAVE APPEARED TO THE EMPLOYEES TO HAVE BEEN WITH THE SUPPORT OF THE RESPONDENT, AND ASSESS THE EFFECT OF ALL THIS UPON THE EMPLOYEES WHEN THEY ENCOUNTERED BEACH AT THE POLLING STATION AS A SCRUTINEER FOR THE RESPONDENT. IN MY VIEW, BEACH'S PRESENCE AT THE POLL IN THE CAPACITY AS SCRUTINEER FOR THE COMPANY COULD ONLY SERVE TO CONFIRM IN THE MINDS OF THE EMPLOYEES THEIR REASONABLE SUSPICION THAT BEACH'S ACTIVITIES, IN FACT, DID HAVE THE SUPPORT OF THE RESPONDENT. THIS IN TURN UNDOUBTEDLY HAD AN INHIBITING EFFECT UPON THEM IN EXERCISING THEIR FRANCHISE. IN ALL THE CIRCUMSTANCES, I AM OF THE OPINION THAT IT WAS UNLIKELY THAT THE EMPLOYEES FELT FREE TO EXPRESS THEIR TRUE WISHES IN CASTING THEIR BALLOTS. THE RESULT OF THE VOTE HELD ON DECEMBER 14TH, 1967 THEREFORE, IN MY JUDGMENT, SHOULD BE SET ASIDE.

8. THE APPLICANT SUBMITS THAT IN VIEW OF ALL THAT HAS TRANSPIRED, THE TAKING OF A NEW VOTE IN THE INSTANT CASE WOULD NOT BE LIKELY TO DISCLOSE THE TRUE WISHES OF THE EMPLOYEES. THE APPLICANT ACCORDINGLY REQUESTS THAT THE BOARD EXERCISE THE DISCRETION VESTED IN IT BY SECTION 7(5) OF THE ACT AND GRANT OUTRIGHT CERTIFICATION.

9. THE UNDERWOOD MANUFACTURING CO. LTD. CASE (1952) C.L.L.C. VOL. 1, 1944-1959, ¶17,040, SETS OUT THE MAIN CONSIDERATION THAT SHOULD BE TAKEN INTO ACCOUNT BY THE BOARD IN EXERCISING ITS DISCRETION UNDER SECTION 7(5), IN THE FOLLOWING TERMS:

IT MUST BE A QUESTION OF FACT IN EACH CASE AS TO WHETHER THE PARTICULAR CIRCUMSTANCES OF THE INDIVIDUAL CASE ARE SUCH AS TO HAVE A REASONABLE TENDENCY TOWARDS A COERCIVE EFFECT ON EMPLOYEES (EVEN IF NOT SO INTENDED) SO AS TO CREATE A LIKELIHOOD OF INTERFERING WITH THE FREE EXERCISE OF THEIR RIGHTS.

10. IN THE INSTANT CASE, BEACH PLAYED A PROMINENT ROLE IN THE ORIGINATION AND CIRCULATION OF THE PETITION OPPOSING THE UNION'S APPLICATION FOR CERTIFICATION. HE SUBSEQUENTLY SOLICITED SUPPORT AMONG THE EMPLOYEES IN HIS CAMPAIGN AGAINST THE UNION IN THE REPRE-

SENTATION VOTE. FINALLY, HE APPEARED AT THE POLLING STATION AS A SCRUTINEER FOR THE RESPONDENT. WHILE I ALREADY HAVE FOUND THAT THE RESULT OF THE DECEMBER 14TH, 1967 VOTE SHOULD NOT BE ACCEPTED AS REFLECTING THE TRUE WISHES OF THE EMPLOYEES, I AM NOT SATISFIED THAT THE CIRCUMSTANCES IN WHICH THE EMPLOYEES CAST THEIR BALLOTS WERE SUFFICIENTLY COERCIVE IN CHARACTER AS TO PREVENT THE TRUE WISHES OF THE EMPLOYEES FROM BEING DISCLOSED IN A NEW AND PROPERLY CONDUCTED REPRESENTATION VOTE. REFERENCE HERE SHOULD BE MADE TO THE WOLVERINE TUBE CASE (1963) C.L.L.C. VOL 2, 1960-1964, ¶16,296. IN THAT CASE, THE BOARD IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 7(5) CERTIFIED THE APPLICANT UNION. THE EVIDENCE OF UNDUE INFLUENCE UPON THE EMPLOYEES IN THE INSTANT CASE FALLS WELL SHORT OF THAT WHICH EXISTED IN THE REPRESENTATION VOTES TAKEN IN THE TWO EARLIER CITED CASES. I ACCORDINGLY WOULD DIRECT THAT A NEW REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DEFINED IN THE BOARD'S DECISION OF AUGUST 31ST, 1967.

11. I HAVE HAD AN OPPORTUNITY OF READING THE DECISIONS OF BOARD MEMBER J.E.C. ROBINSON AND BOARD MEMBER P.J. O'KEEFFE, WHO, TOGETHER WITH MYSELF, CONSTITUTE THE DIVISION OF THE BOARD SEIZED WITH THE INSTANT APPLICATION. FOR THE REASONS GIVEN IN HIS DECISION, BOARD MEMBER ROBINSON FINDS THAT THE RESULT OF THE ORIGINAL REPRESENTATION VOTE SHOULD STAND. BOARD MEMBER O'KEEFFE, ON THE OTHER HAND, FOR THE REASONS GIVEN IN HIS DECISION, WOULD CERTIFY THE APPLICANT WITHOUT THE TAKING OF A FURTHER VOTE, PURSUANT TO SECTION 7(5) OF THE ACT. BOARD MEMBER O'KEEFFE IS AWARE THAT THE CONSEQUENCE OF HIS POSITION IS TO RULE OUT THE POSSIBILITY OF A MAJORITY DECISION BY THE BOARD DIRECTING THE TAKING OF A NEW VOTE. IN THESE CIRCUMSTANCES, I.E. THE ABSENCE OF A MAJORITY DECISION, THE RESULT OF THE REPRESENTATION VOTE TAKEN ON DECEMBER 14TH, 1967, OF NECESSITY, MUST GOVERN.

12. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

13. THE APPLICATION IS THEREFORE DISMISSED.

14. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.

15. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: MARCH 19, 1968.

I AGREE GENERALLY WITH THE EVIDENCE IN THIS CASE AS OUTLINED IN THE DECISION OF CHAIRMAN, J. H. BROWN, Q.C.

IN MY ESTIMATION THE EVIDENCE IN THIS CASE ESTABLISHES QUITE CLEARLY THAT JAMES BEACH WAS AT ALL TIMES PRIOR TO AND DURING THE VOTE THE AGENT AND LEADING SPOKESMAN FOR THE RESPONDENT COMPANY. I VIEW HIS ACTIVITIES MOST SERIOUSLY AND HIS UTTERANCES, PARTICULARLY WITH REGARD TO HIS STATEMENT THAT THE PLANT WOULD BE SHUT DOWN IF THE UNION "WENT IN" IS COERCIVE IN THE EXTREME. THE EMPLOYEES FACED WITH THE PRESSURES OF THIS EMPLOYER SPOKESMAN, AND AGENT BEACH, COULD NOT BE EXPECTED TO EXPRESS THEIR TRUE WISHES IN THE VOTE THAT TOOK PLACE ON DECEMBER 14TH, 1967.

THE DAMAGE HAS NOW BEEN DONE, THE EMPLOYEES HAVE BEEN BRAIN WASHED, COERCED AND SCARED OFF FROM THE UNION TO THE EXTENT THAT NO NEW VOTE IN THE IMMEDIATE FUTURE IS LIKELY TO DISCLOSE THEIR TRUE WISHES.

THE COERCIVE INTERFERENCE BY THE RESPONDENT COMPANY THROUGH JAMES BEACH IN THE REPRESENTATION OF THE EMPLOYEES THROUGH THE APPLICANT UNION IS CLEARLY PROHIBITED BY SECTION 48 OF THE ACT. IN FACT THE TYPE OF INTERFERENCE BY THE RESPONDENT IN THE INSTANT CASE GOES TO THE VERY ROOT OF OUR LONG ESTABLISHED AND ESTEEMED BASIC FREE EXERCISE OF THE INDIVIDUAL'S RIGHT TO VOTE. ANY VOTE IS MEANINGLESS UNLESS THE PERSON VOTING IS FREE TO EXPRESS HIS TRUE WISHES WITHOUT UNDUE INFLUENCE BY PERSONS GOVERNING OR IN AUTHORITY OVER HIM. WHEN WE COME TO THE LABOUR RELATIONS ACT AND THE COMPLEX FIELD OF INDUSTRIAL RELATIONS THE FREEDOM OF THE INDIVIDUAL WORKER TO DECIDE ON HIS BARGAINING AGENT FREE FROM COERCIVE PRESSURE FROM HIS EMPLOYER IS NOT ONLY PROTECTED IN THE ACT BUT THE WHOLE ACT ITSELF AND THE INTENTION OF THE LEGISLATURE WITH REGARD TO ALLOWING INDUSTRIAL DEMOCRACY TO PREVAIL IS PREDICATED ON THIS ASSURED RIGHT.

IN VIEWING THE SERIOUSNESS OF THE SITUATION IN THE INSTANT CASE, I JOIN WITH THE BOARD IN THE PEEL BLOCK COMPANY LTD. CASE, CCH CANADIAN LABOUR LAW REPORTER, VOL. 1, ¶16,277 AT P. 13,311 WHEREIN THEY STATE THE FOLLOWING:

IT IS THE PURPOSE AND SPIRIT OF THE ACT THAT WHEN EMPLOYEES EMBARK UPON A COURSE OF ACTION LOOKING TO THE SELECTION OR REJECTION OF A BARGAINING AGENT THAT THEY ARE ENTITLED TO CHOOSE AND ACT FREE FROM THE IMPROPER INFLUENCES OF THEIR EMPLOYER. WHAT IS ALWAYS TO BE DETERMINED IN THIS RESPECT ARE THE TRUE WISHES OF THE EMPLOYEES, NOT THOSE OF THE EMPLOYER WHO MAY BE SEEKING TO IMPROPERLY INFLUENCE THEM. ATTEMPTS BY EMPLOYERS TO IMPROPERLY INFLUENCE OR TO INTERFERE WITH THE FREEDOM OF EMPLOYEES TO SELECT OR REJECT A TRADE UNION AS THEIR COLLECTIVE BARGAINING AGENT MUST ALWAYS BE CONDEMNED AND DISCOURAGED BY THIS BOARD.

IT IS A FUNCTION AND DUTY OF THIS BOARD TO BE VIGILANT AND SCRUPULOUS IN ITS CONCERN TO PROTECT THE FUNDAMENTAL RIGHTS OF EMPLOYEES TO MAKE THEIR OWN CHOICE, AS DISTINCT FROM THE CHOICE OF THEIR

EMPLOYER, ON THE MATTER OF SELECTING OR REJECTING
A BARGAINING AGENT.

IN MY OPINION, THE UNLAWFUL BEHAVIOUR OF JAMES BEACH ACTING AS THE AGENT OF THE RESPONDENT COMPANY IN THE INSTANT CASE WERE OF SUCH A DELIBERATE, OBSTRUCTIVE AND INTERFERING NATURE THAT THE CONTINUING EFFECTS THEREOF WILL NOT LIKELY BE DISSIPATED OR SET ASIDE BY ANY COUNTER PRECAUTIONARY MEASURES WHICH COULD NOW BE ORDERED BY THIS BOARD FOR THE CONDUCT OF ANY NEW REPRESENTATION VOTE. ON ALL OF THE EVIDENCE PLACED BEFORE ME IN THIS CASE I CAN ONLY CONCLUDE THAT THE IMPROPER INFLUENCES ADOPTED BY THE RESPONDENT IN THIS CASE WILL CONTINUE FOR AN INDEFINITE PERIOD IN THE FUTURE AND WILL IN ALL LIKELIHOOD SO PREJUDICIALLY AFFECT THE RESULT OF ANY NEW REPRESENTATION VOTE AS TO MAKE IT MOST UNLIKELY THAT SUCH VOTE WOULD REVEAL THE FREELY EXPRESSED WISHES OF THE EMPLOYEES.

IN THE RESULT I FIND THAT THE APPLICANT UNION IS ENTITLED TO INVOKE THE PROVISIONS OF SECTION 7(5) OF THE ACT AND BE CERTIFIED WITHOUT THE TAKING OF A NEW REPRESENTATION VOTE.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

MARCH 19, 1968.

ON THE EVIDENCE BEFORE ME, I WOULD FIND THAT THERE HAD BEEN NO VIOLATIONS OR BREACHES OF THE ELECTION REGULATIONS BY THE RESPONDENT OR PERSONS ACTING ON ITS BEHALF. ACCORDINGLY, I WOULD FIND THAT THE RESULT OF THE ORIGINAL ELECTION SHOULD STAND AND THE PRESENT APPLICATION SHOULD BE DISMISSED.

THE ONLY PERSON AGAINST WHOM THE UNION PRESENTED ANY EVIDENCE ALLEGING MISCONDUCT WAS JAMES BEACH, WHO IS EMPLOYED BY THE RESPONDENT AS A CLAM OPERATOR. THE FACT THAT HE IS A CLAM OPERATOR AND NOTHING MORE IS THE CONSISTENT EVIDENCE WHICH WAS PRESENTED AT THE ORIGINAL APPLICATION FOR CERTIFICATION, DURING THE REPETITIVE CORRESPONDENCE FORWARDED TO THE BOARD BY THE UNION AFTER THAT APPLICATION, DURING THE TIME OF THE VOTE AND DURING THE PRESENT APPLICATION. THOUGH CHALLENGES WERE MADE TO OTHER PERSONS AT VARIOUS TIMES, THE UNION CONSISTENTLY CONCEDED THAT THE POSITION OF BEACH WAS THAT OF A CLAM OPERATOR.

ON THE ORIGINAL APPLICATION FOR CERTIFICATION, THE BOARD FOUND THAT THE PETITION ORIGINATED BY BEACH IN OPPOSITION TO THE APPLICATION EXPRESSED THE VOLUNTARY WISHES OF THE SIGNATORIES TO THAT PETITION. IN MY RESPECTFUL SUBMISSION, IT IS ABSURD TO SUGGEST THAT HAVING REPRESENTED THE PETITIONERS ON THE ORIGINAL APPLICATION, HE WOULD TAKE ANYTHING OTHER THAN AN ACTIVE ROLE IN THE CAMPAIGN AGAINST THE UNION PRIOR TO THE TAKING OF THE VOTE. EVEN IF THE ACTIONS OF BEACH WERE WRONG DURING THE ELECTION CAMPAIGN, (AND I WOULD FIND ON THE EVIDENCE BEFORE ME THAT THEY ARE NOT,) THERE IS NOT ONE IOTA OF EVIDENCE TO SUGGEST THAT THE COMPANY WAS AWARE OF, OR ASSISTED IN, SUCH ACTIONS. THERE IS ABSOLUTELY NO BASIS, OTHER THAN ONE ON MERE CONJECTURE, THAT THE CONDUCT OF BEACH SHOULD BE ATTRIBUTED TO THE COMPANY SO AS TO SUGGEST THAT THE EMPLOYEES WOULD BE INHIBITED IN EXERCISING THEIR FRANCHISE.

WHILE BEACH ACTED AS THE SCRUTINEER FOR THE COMPANY DURING THE VOTE, BOTH THE DIRECTION OF THE BOARD TO THE PARTIES AND THE BOARD'S OWN POLICY NOTES SUGGEST THAT THE COMPANY SHOULD APPOINT A "RANK AND FILE EMPLOYEE" TO ACT AS ITS SCRUTINEER. THE BOARD HAD EARLIER FOUND THAT BEACH WAS SUCH AN EMPLOYEE IN ALLOWING THE PETITION. INDEED, THE UNION ITSELF, WHILE IT CHALLENGED CERTAIN PERSONS AT THE VOTE, DID NOT CHALLENGE BEACH. THAT BEING SO, I FIND IT INCOMPREHENSIBLE THAT MY COLLEAGUES SHOULD ATTACH ANY UNTOWARD MEANING TO THE FACT THAT THE COMPANY COMPLIED WITH THE BOARD'S DIRECTION IN APPOINTING BEACH AS ITS SCRUTINEER. THE FACTS IN THIS CASE ARE CLEARLY DISTINGUISHABLE FROM THE DUFFIELD CONSTRUCTION LTD. CASE, SUPRA. IN THE INSTANT CASE, THERE IS ABSOLUTELY NO EVIDENCE OF THE PRESENCE OF ADDITIONAL COMPANY REPRESENTATIVES AT THE VOTE, THE BARGAINING UNIT IS LARGE AND THE EMPLOYEES ARE OF A TYPE UNLIKELY TO EXPRESS OTHER THAN THEIR TRUE AND VOLUNTARY WISHES ON A VOTE.

IN ALL THE CIRCUMSTANCES OF THIS CASE, THEREFORE, I HAVE NO HESITATION IN FINDING THAT THIS APPLICATION SHOULD BE DISMISSED, AND THE ORIGINAL VOTE SHOULD STAND.

13760-67-R: UNITED SHOE WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. REB INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFFE: MARCH 4, 1968.

2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF ALL EMPLOYEES OF THE RESPONDENT AT ITS SERVICE PLANT IN KITCHENER WITH CERTAIN EXCEPTIONS WHICH ARE DEALT WITH BELOW. THE RESPONDENT SUBMITS THAT THE APPROPRIATE BARGAINING UNIT SHOULD INCLUDE NOT ONLY THOSE EMPLOYEES AT THE SERVICE PLANT BUT ALSO THOSE EMPLOYEES AT ITS VULCANIZING PLANT BOTH OF WHICH ARE SITUATED ON ARDELT AVENUE AT KITCHENER.

3. BY ITS DECISION DATED NOVEMBER 2ND, 1967, THE BOARD APPOINTED MR. J. R. HENDERSON, EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT. FOLLOWING THE REPORT OF THE EXAMINER DATED DECEMBER 1ST, 1967, THE BOARD RECEIVED WRITTEN SUBMISSIONS FROM THE APPLICANT AND THE RESPONDENT IN RESPECT TO THE SAID REPORT. AS WELL, THE BOARD CONDUCTED A HEARING AT THE PLANT OF THE RESPONDENT IN KITCHENER ON JANUARY 26TH, 1968 TO OBTAIN CLARIFICATION OF CERTAIN ASPECTS OF THE REPORT OF THE EXAMINER. IT WAS AGREED AT THAT TIME THAT NO FURTHER SUBMISSIONS BY THE PARTIES WERE NECESSARY.

4. THE GENERAL POLICY OF THE BOARD IS THAT SINGLE PLANT UNITS ARE APPROPRIATE FOR COLLECTIVE BARGAINING, HOWEVER, IT DOES CONSIDER THE PARTICULAR CIRCUMSTANCES IN A CASE WHERE AN EMPLOYER HAS MORE THAN ONE PLANT IN A GEOGRAPHICAL AREA. IN THIS REGARD THE BOARD HAS IN PREVIOUS CASES SET OUT VARIOUS CONSIDERATIONS WHICH IT TAKES INTO ACCOUNT IN EXAMINING THE APPROPRIATENESS OF BARGAINING UNITS. IN THE HI-HO CURB SERV-US LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL, 1963 P. 1 THE ENDORSEMENT READ IN PART AS FOLLOWS:

THE BOARD RECOGNIZES THAT THERE MAY BE A NUMBER OF DIFFERENT UNITS OF EMPLOYEES WHICH ARE APPROPRIATE FOR COLLECTIVE BARGAINING IN ANY PARTICULAR TYPE OF OPERATION. IN SITUATIONS WHERE AN EMPLOYER HAS EMPLOYEES AT MORE THAN ONE LOCATION IN A GEOGRAPHIC AREA THE BOARD TAKES INTO ACCOUNT A NUMBER OF FACTORS IN DETERMINING WHAT CONSTITUTES AN APPROPRIATE UNIT. MORE PARTICULARLY, THE BOARD CONSIDERS WHETHER THERE IS INTERCHANGE OF EMPLOYEES BETWEEN LOCATIONS, THE NUMBER OF EMPLOYEES, AND THE TYPE OF OPERATION CARRIED ON IN EACH LOCATION. AS WELL THE BOARD TAKES INTO ACCOUNT THE HISTORY OF BARGAINING UNITS IN THE PARTICULAR TYPE OF OPERATION. A FURTHER CONSIDERATION IS THE DESIRE OF THE PARTIES.

IN THE USARCO LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER, 1967, P. 526 THE BOARD SAID AS FOLLOWS ON P. 529:

SOME OF THE FACTORS WHICH THE BOARD TAKES INTO CONSIDERATION WHICH DETERMINE THE APPROPRIATENESS OF BARGAINING UNITS, WHICH INCLUDE EMPLOYEES AT MORE THAN ONE LOCATION MAY BE ENUMERATED AS FOLLOWS:

1. COMMUNITY OF INTEREST OF EMPLOYEES;
2. CENTRALIZATION OF MANAGERIAL AUTHORITY;
3. THE ECONOMIC FACTOR OF ONE BARGAINING UNIT;
4. SOURCE OF WORK.

WHEN ALL THESE FACTORS HAVE BEEN TAKEN INTO CONSIDERATION THE BOARD IS ABLE TO DETERMINE WHETHER OR NOT THERE IS AN INTEGRATED OPERATION WHICH INDICATES THE APPROPRIATENESS OF ONE INCLUSIVE BARGAINING UNIT.

5. IN THE INSTANT CASE THE PARTIES HAVE AGREED THAT THERE IS NO SYSTEMATIC INTERCHANGE OF EMPLOYEES BETWEEN THE TWO PLANTS. THERE ARE ONLY TWO EMPLOYEES OF THE SERVICES PLANT WHO HAVE A REGULAR CONNECTION WITH THE VULCANIZING PLANT AND THEY ARE INVOLVED IN THE HANDLING OF MATERIALS BETWEEN THE TWO PLANTS. THERE IS ONLY ONE PART OF THE

OPERATIONS PERFORMED AT THE SERVICES PLANT WHICH IS EXCLUSIVELY DONE FOR THE VULCANIZING PLANT. ALL THE OTHER PRODUCTION IS FOR THE VULCANIZING PLANT TOGETHER WITH THE OTHER OPERATIONS OF THE RESPONDENT. IT CANNOT BE SAID THAT THERE IS PRODUCT INTEGRATION BETWEEN THE PLANTS. AS IS QUITE USUAL IN SUCH CIRCUMSTANCES, THERE IS COMMON SENIOR MANAGEMENT AND ADMINISTRATION FOR ALL OF THE PLANTS OF THE RESPONDENT INCLUDING THE SERVICES AND VULCANIZING PLANTS. THESE MATTERS ARE DEALT WITH BY PERSONS LOCATED AT THE PLANT OF THE RESPONDENT KNOWN AS THE BREITHAUPST PLANT IN KITCHENER WHICH IS SEPARATE AND APART FROM THE OTHER PLANTS AND WHICH HAS BEEN COVERED UNDER A SEPARATE CERTIFICATE BY THE BOARD. IN THE LINE OF MANAGEMENT EACH PLANT IS THE RESPONSIBILITY OF A PLANT SUPERINTENDENT, EACH OF WHOM REPORT TO THE ASSISTANT MANAGER OF MANUFACTURING WHOSE OFFICE IS AT THE BREITHAUPST STREET PLANT, AND WHO ALONG WITH THOSE ABOVE HIM ARE RESPONSIBLE FOR ALL THE RESPONDENTS OPERATIONS IN A SIMILAR MANNER AS THESE TWO PLANTS. IT IS ALSO SIGNIFICANT THAT THE RESPONDENT HAS SET UP ITS AFFAIRS IN SUCH A MANNER WHICH WOULD INDICATE THAT MORE THAN ONE BARGAINING UNIT IS NECESSARY.

6. HAVING REGARD THEREFORE TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, AND AFTER GIVING CAREFUL CONSIDERATION TO THE WRITTEN REPRESENTATIONS OF BOTH COUNSEL INVOLVED, AND HAVING EXAMINED AND APPLIED THE VARIOUS FACTORS DESCRIBED IN PREVIOUS DECISIONS OF THIS BOARD RELATING TO THE DETERMINATION OF THE APPROPRIATENESS OF BARGAINING UNITS, IN VIEW OF THE LACK OF ANY INTERCHANGE OF PRODUCTION EMPLOYEES, THE SEPARATE AND INDEPENDENT NATURE OF THE PRODUCTION OPERATIONS AT THE TWO LOCATIONS DESPITE THEIR PROXIMITY TO EACH OTHER AND THEIR COMMON ADMINISTRATION, THE BOARD IS OF THE OPINION THAT THE UNIT COMPOSED OF THE EMPLOYEES OF THE RESPONDENT AT ITS SERVICES PLANT ALONE IS APPROPRIATE FOR COLLECTIVE BARGAINING.

7. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS SERVICES PLANT IN KITCHENER, SAVE AND EXCEPT ASSISTANT FORELADIES, ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FORELADY, AND ASSISTANT FOREMAN, OFFICE AND SALES STAFF, EMPLOYEES IN THE ENGINEERING DEPARTMENT, PRODUCTION AND QUALITY CONTROL PERSONNEL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT DENNIS BROWN, JOHN MELZER, WILHELM ORTBACH, MAINTENANCE MEN, ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

9. AT THE MEETING HELD BY THE EXAMINER IN THIS MATTER, THE PARTIES AGREED THAT THERE WERE 36 EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AS OF THE DATE OF THE APPLICATION. THE APPLICANT FILED EVIDENCE OF MEMBERSHIP FOR 20 PERSONS AS OF OCTOBER 25TH, 1967, THE TERMINAL DATE ESTABLISHED IN THIS APPLICATION WHICH IS THE DATE ON WHICH THE BOARD DETERMINES THE MEMBERSHIP POSITION OF THE APPLICANT. THE NAMES OF ALL THOSE PERSONS ON WHOSE BEHALF THE APPLICANT FILED EVIDENCE OF MEMBERSHIP CORRESPOND WITH THE NAMES OF THE EMPLOYEES IN THE BARGAINING UNIT.

10. THERE WAS ALSO FILED WITH THE BOARD A DOCUMENT DATED OCTOBER 19TH, 1967 SIGNED BY 24 PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT EXPRESSING OPPOSITION TO THE INSTANT APPLICATION. ALL OF THESE PERSONS ARE EMPLOYEES IN THE BARGAINING UNIT AND 13 OF THEM ARE CLAIMED BY THE APPLICANT IN MEMBERSHIP. IF THE BOARD SHOULD FIND THAT THE PETITION WEAKENS OR CASTS DOUBT ON THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT ON BEHALF OF THE EMPLOYEES CONCERNED, THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR LESS THAN FIFTY-FIVE PER CENT REQUIREMENT FOR OUTRIGHT CERTIFICATION. ACCORDINGLY, THE BOARD WILL CONDUCT ITS USUAL INQUIRY INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION AND HEAR THE CHARGES OF THE APPLICANT IN CONNECTION THEREWITH. (THE PETITION WAS ONLY IDENTIFIED AT THE HEARING ON NOVEMBER 2ND, 1967).

11. THE BOARD THEREFORE DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR A CONTINUATION OF HEARING FOR THE PURPOSE OF INQUIRING INTO THE PETITION AND FOR THE PURPOSE OF ENTERTAINING THE CHARGES FILED BY THE APPLICANT RELATING TO IT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER H. F. IRWIN: MARCH 4, 1968.

1. I DISSENT.

2. THE BOARD'S POLICY FOLLOWS TWO DISTINCT PATTERNS IN DETERMINING THE APPROPRIATENESS OF BARGAINING UNITS IN OTHER THAN THE CONSTRUCTION INDUSTRY.

3. IF ON THE DATE OF THE APPLICATION FOR CERTIFICATION THE EMPLOYER OPERATES ONLY ONE ESTABLISHMENT AT ONE LOCATION IN THE GEOGRAPHICAL AREA CONCERNED, THE PRACTICE OF THE BOARD IS TO DESCRIBE THE APPROPRIATE UNIT AS COMPRISING ALL EMPLOYEES IN THE MUNICIPALITY, TOWNSHIP OR COUNTY IN WHICH THE ESTABLISHMENT IS SITUATED. FOR EXAMPLE, IF THE ESTABLISHMENT WAS SITUATED IN KITCHENER, THE UNIT WOULD COMPRISE ALL EMPLOYEES OF THE EMPLOYER AT KITCHENER, WITH THE USUAL EXCEPTIONS. MOREOVER, THIS UNIT IS INTENDED TO COVER EMPLOYEES OF THE EMPLOYER IN ANY OTHER ESTABLISHMENT OR LOCATION IN KITCHENER AT WHICH THE EMPLOYER MIGHT SUBSEQUENTLY COMMENCE TO CONDUCT ALL OR A PART OF HIS BUSINESS.

4. IF, ON THE OTHER HAND, THE EMPLOYER AT THE TIME THE APPLICATION WAS MADE OPERATED HIS BUSINESS FROM TWO OR MORE ESTABLISHMENTS OR LOCATIONS IN THE GEOGRAPHICAL AREA CONCERNED, THE BOARD WOULD APPLY A NUMBER OF TESTS TO ASCERTAIN WHICH ESTABLISHMENTS OR LOCATIONS CONSTITUTED AN APPROPRIATE BARGAINING UNIT. THESE TESTS ARE SET OUT IN CONSIDERABLE DETAIL IN THE USARCO LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967 AT P. 529 AND MAY BE SUMMARIZED AS FOLLOWS:-

(1) COMMUNITY OF INTEREST

- (A) NATURE OF WORK PERFORMED
 - (B) CONDITIONS OF EMPLOYMENT
 - (C) SKILLS OF EMPLOYEES
 - (D) ADMINISTRATION
 - (E) GEOGRAPHIC CIRCUMSTANCES
 - (F) FUNCTIONAL COHERENCE AND INTERDEPENDENCE
- (2) CENTRALIZATION OF MANAGERIAL AUTHORITY
 - (3) ECONOMIC FACTOR
 - (4) SOURCE OF WORK

5. SO LONG AS THE ABOVE BOARD POLICIES REMAIN IN EFFECT, I AM OBLIGED TO FOLLOW THEM. HOWEVER, I AM SERIOUSLY DISTURBED BY THE APPARENT INCONSISTENCIES. WHERE THERE IS ONLY ONE ESTABLISHMENT OR LOCATION, THE BOARD GRANTS BARGAINING RIGHTS FOR THE WHOLE GEOGRAPHICAL AREA NOTWITHSTANDING THAT IT HAS NO KNOWLEDGE REGARDING THE FACTS AND CIRCUMSTANCES IN RESPECT OF ANY OTHER BUSINESS THAT MAY BE SUBSEQUENTLY ESTABLISHED BY THE EMPLOYER AT ANOTHER LOCATION IN THE SAME GEOGRAPHICAL AREA. WILL THE OPERATIONS BE SIMILAR? ARE THE SKILLS OF THE EMPLOYEES AS A GROUP SIMILAR AT BOTH LOCATIONS? IS THERE AN INTERCHANGE OF EMPLOYEES? DOES THE COMPANY ADMINISTER BOTH PHASES OF ITS OPERATIONS JOINTLY? HOW FAR APART ARE THE TWO LOCATIONS? WHAT ARE THE ECONOMIC FACTORS? THE BOARD HAS CONSISTENTLY REFUSED TO MAKE DECISIONS IN RESPECT OF OCCUPATIONAL CLASSIFICATIONS THAT ARE NOT IN EXISTENCE AT THE TIME THE APPLICATION WAS MADE. YET, IT GIVES CARTE BLANCHE BARGAINING RIGHTS FOR ESTABLISHMENTS THAT MAY SUBSEQUENTLY BE ESTABLISHED BUT WHICH ACTUALLY DO NOT EXIST AT THE TIME OF THE APPLICATION.

6. IN THE INSTANT CASE, THE RESPONDENT HAS PURCHASED A PARCEL OF LAND AS AN INDUSTRIAL SITE AT THE CORNER OF ARDELT AVENUE AND HENRY STURM BOULEVARD, KITCHENER. THE ARDELT AVENUE FRONTAGE IS APPROXIMATELY 825 FEET. THE DEPTH OF THE PROPERTY VARIES FROM 500 FEET TO A MAXIMUM OF 825 FEET. THE PLANS CALL FOR EIGHT BUILDINGS TO BE ERECTED ON THIS SITE. AT PRESENT, THERE ARE THE SERVICES PLANT, THE VULCANIZING PLANT AND A WAREHOUSE. EMPLOYEES OF THE RESPONDENT DO NOT STAFF THE WAREHOUSE OPERATION.

7. IN SUCH CIRCUMSTANCES, THE TESTS LAID DOWN BY THE BOARD IN THE USARCO LIMITED CASE, SUPRA, MUST BE APPLIED TO ASCERTAIN THE APPROPRIATE BARGAINING UNIT.

- (1) COMMUNITY OF INTEREST

- (A) PART OF THE PRODUCTS PRODUCED IN THE SERVICES PLANT ARE SENT TO THE VULCANIZING PLANT FOR FURTHER PROCESSING AND SHOE ASSEMBLY.

(B) SIMILAR WORKING CONDITIONS AND THE SAME FRINGE BENEFITS PREVAIL AT BOTH LOCATIONS.

(C) THE OCCUPATIONAL CLASSIFICATIONS AT BOTH PLANTS, ALTHOUGH DIFFERENT, REQUIRE RELATIVELY THE SAME AMOUNT OF SKILL.

(D) THE COMPANY ADMINISTERS BOTH PLANTS JOINTLY.

(E) THE TWO PLANTS ARE ONLY 308 FEET APART.

(F) THERE ARE 36 EMPLOYEES IN THE SERVICES PLANT AND 120 IN THE VULCANIZING PLANT. THERE IS PRACTICALLY NO INTERCHANGE OF EMPLOYEES.

(2) CENTRALIZATION OF MANAGERIAL AUTHORITY.

THE SENIOR OFFICIALS AND MANAGERS OF THE COMPANY WILL OCCUPY A NEW MODERN OFFICE BUILDING TO BE ERECTED ON THE PROPERTY.

(3) ECONOMIC FACTOR

THE TWO OPERATIONS COULD HAVE BEEN EASILY HOUSED IN ONE BUILDING. HOWEVER, THE COMPANY HAS FOLLOWED THE MODERN TREND OF SEPARATE BUILDINGS WHICH, AMONGST OTHER ADVANTAGES, REDUCES THE RISK OF LOSS OF LIFE AS WELL AS TOTAL PLANT DESTRUCTION BY FIRE OR OTHER CASTASTROPHE.

(4) THE VULCANIZING PLANT DEPENDS ON THE SERVICES PLANT AS ITS SOLE SOURCE OF SUPPLY FOR CERTAIN MATERIALS USED IN FABRICATING AND ASSEMBLING FOOTWEAR.

8. THE MAJORITY DECISION IN PARAGRAPH 6 THEREOF STATES THAT "IN VIEW OF THE LACK OF INTERCHANGE OF PRODUCTION EMPLOYEES, THE SEPARATE AND INDEPENDENT NATURE OF THE PRODUCTION OPERATIONS AT THE TWO LOCATIONS DESPITE THEIR PROXIMITY TO EACH OTHER AND THEIR COMMON ADMINISTRATION, THE BOARD IS OF THE OPINION THAT THE UNIT COMPOSED OF EMPLOYEES OF THE RESPONDENT AT ITS SERVICES PLANT ALONE IS APPROPRIATE FOR COLLECTIVE BARGAINING."

9. IF THE BOARD'S DECISION IS RIGHT IN THE INSTANT CASE, THEN, WITH RESPECT, I SUGGEST THAT IT WAS WRONG IN ITS DECISION IN THE WINDSOR OFFICE SUPPLY CO. CASE, C.L.L.C. VOL. 2 ¶16,271 OR VICE VERSA. THERE THE BOARD FOUND THAT THE EMPLOYEES AT TWO UNRELATED DIVISIONS OF THE COMPANY AND SITUATED OVER ONE MILE APART CONSTITUTED A SINGLE BARGAINING UNIT. IN THAT DECISION THE BOARD STATED AS FOLLOWS:

2. THE RESPONDENT COMPANY CARRIES ON THE BUSINESS OF RETAILING AND WHOLESALING OFFICE SUPPLIES, EQUIPMENT,

AND FURNITURE IN THE CITY OF WINDSOR. ITS BUSINESS OPERATIONS ARE CARRIED ON AT TWO SEPARATE LOCATIONS, ONE, THE MAIN STORE AT 361 PELLISSIER STREET, AND THE OTHER, KNOWN AS THE SYSTEMS DIVISION AT 737 WALKER ROAD. WE ARE TOLD THAT THE "SYSTEMS DIVISION" IS RESTRICTED TO THE MAIL ORDER SALE AND DISTRIBUTION OF BOOKKEEPING SYSTEMS FOR AUTOMOTIVE DEALERS. ITS STAFF CONSISTS OF AN OFFICE GIRL AND TWO SHIPPERS AND IT IS UNDER A MANAGER RESPONSIBLE TO THE COMPANY PRESIDENT. APPARENTLY, THE RESPONDENT PURCHASED THE OPERATIONS AND ASSETS OF THE "SYSTEMS DIVISION" FROM ANOTHER COMPANY WHICH HAS CEASED TO DO BUSINESS. WE WERE ALSO TOLD THAT THERE HAS BEEN NO INTERCHANGE OF PERSONNEL BETWEEN THE TWO LOCATIONS. APART FROM OFFICE AND MANAGEMENT PERSONNEL, THE STAFF AT THE MAIN STORE CONSISTS OF THREE OUTSIDE SALESMEN, ONE TRUCK DRIVER, WHO ALSO PICKS UP MAIL ORDERS FROM THE SYSTEMS DIVISION, THREE CLERKS AND A SHIPPER. THE MANAGEMENT OF THE MAIN STORE IS SEPARATE FROM THAT OF THE SYSTEMS DIVISION.

3. IT IS ARGUED BY THE RESPONDENT THAT A SINGLE BARGAINING UNIT COMPRISING THE EMPLOYEES AT BOTH OF THE RESPONDENT'S LOCATIONS WOULD NOT BE APPROPRIATE FOR COLLECTIVE BARGAINING.

4. WE ARE NOT PERSUADED THAT THE OPERATIONS OF THE RESPONDENT ARE SO DISTINCT IN CHARACTER AS TO CONSTITUTE DIFFERENT BUSINESS OPERATIONS. IN OUR VIEW, THEY ARE NO DIFFERENT THAN SAY TWO DEPARTMENTS IN A DEPARTMENT STORE WHICH SPECIALIZE IN DIFFERENT ASPECTS OF OFFICE SUPPLIES EACH HAVING A SEPARATE DEPARTMENT MANAGER RESPONSIBLE TO THE SAME GENERAL MANAGEMENT.

10. IT IS ESSENTIAL THAT THE BOARD'S TESTS BE APPLIED FAIRLY AND CONSISTENTLY TO THE EVIDENCE IN EACH CASE IF A STABLE POLICY IS TO EMANATE THEREFROM. THE EVIDENCE BEFORE THE BOARD IN THE INSTANT CASE IS MUCH STRONGER IN ITS SUPPORT OF HAVING BOTH PLANTS COMPRISE THE APPROPRIATE BARGAINING UNIT THAN WAS THE EVIDENCE IN THE WINDSOR OFFICE SUPPLY CASE.

11. IN THE HI-HO CURB SERV-US LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1963 AT P. 1, THE EMPLOYER OWNED AND OPERATED FIVE DRIVE IN RESTAURANTS IN THE GREATER WINDSOR AREA. THE APPLICANT ONLY APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT AT THE ONE LOCATION. THE EMPLOYER MADE NO REQUEST THAT THE UNIT INCLUDE EMPLOYEES WORKING AT THE OTHER LOCATIONS. THE BOARD POINTED OUT THAT IT TAKES INTO CONSIDERATION, INTER ALIA, THE DESIRE OF THE PARTIES. THIS FACT ALONE DISTINGUISHES THE HI-HO CURB SERV-US LIMITED CASE FROM THE INSTANT CASE WHERE THE EMPLOYER URGED THE BOARD TO INCLUDE BOTH PLANTS IN THE BARGAINING UNIT.

12. AS TO THE RESPONDENT'S PLANT LOCATED AT 300 BREITHAUPT STREET, KITCHENER, THE UNITED SHOE WORKERS OF AMERICA WAS CERTIFIED AS BARGAINING AGENT FOR THE PLANT EMPLOYEES THEREIN ON JULY 9, 1964. HOWEVER, IN ITS DECISION THE BOARD STATED THAT IT FOUND THE SINGLE PLANT TO BE APPROPRIATE "HAVING REGARD TO ALL THE CIRCUMSTANCES REVEALED IN THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT AND THE REPRESENTATION OF THE PARTIES." WHEN THE BOARD'S DECISION HAS SUCH A PREAMBLE, IT WOULD INDICATE THAT THERE WERE PROBABLY SPECIAL OR EXTENUATING CIRCUMSTANCES INVOLVED. HOWEVER, IN THE INSTANT CASE, THERE IS AN ENTIRELY NEW AND DIFFERENT SET OF CIRCUMSTANCES TO BE CONSIDERED WHICH WERE NON-EXISTENT IN 1964.

13. IF THIS PATTERN OF SINGLE PLANT BARGAINING UNITS IS CONTINUED WITH THE RESPONDENT COMPANY, IT MEANS THAT UNDER EXISTING PLANS THERE COULD BE AT LEAST SIX PLANTS AT THE ARDELT AVENUE LOCATION EACH WITH A DIFFERENT BARGAINING AGENT. HOW CAN SUCH A SITUATION PRODUCE A CLIMATE THAT WOULD PROMOTE SOUND COLLECTIVE BARGAINING AS ENVISAGED BY THE LABOUR RELATIONS ACT? UNION RIVALRY WOULD AROUSE A KEEN COMPETITIVE SPIRIT AND EACH UNION WOULD GEAR ITSELF TO SURPASS THE OTHERS IN SECURING WAGE INCREASES AND FRINGE BENEFITS FOR THE EMPLOYEES IN THEIR INDIVIDUAL PLANTS. A STRIKE AT ONE PLANT MIGHT WELL CLOSE ALL PLANTS RESULTING IN UNEMPLOYMENT FOR THE WORKERS AS WELL AS LOSS OF PRODUCTION FOR THE EMPLOYER. IT WOULD PRODUCE COLLECTIVE CHAOS, NOT SOUND COLLECTIVE BARGAINING. THE BOARD IS FULLY AWARE OF THE CONSEQUENCES OF SUCH A SITUATION AND IN THE GOODYEAR SERVICE STORE CASE, 65 CLLC, ¶18,018, THE BOARD STATED:-

IN OUR OPINION WHERE AN EMPLOYER CONDUCTS ESSENTIALLY SIMILAR RETAIL OR SERVICE STORE OPERATIONS AT A NUMBER OF LOCATIONS IN A GIVEN GEOGRAPHICAL AREA IT WOULD NOT, GENERALLY SPEAKING, BE CONDUCIVE TO SOUND COLLECTIVE BARGAINING FOR A SERIES OF BARGAINING UNITS TO BE ESTABLISHED IN RESPECT OF GROUPS OF EMPLOYEES PERFORMING SIMILAR TASKS AND HAVING SIMILAR BARGAINING INTERESTS. SUCH A SITUATION WHERE SOME EMPLOYEES MIGHT BE REPRESENTED BY ONE TRADE UNION, OTHERS BY ANOTHER, AND OTHERS NOT AT ALL, WOULD BE INVIDIOUS FROM THE EMPLOYER AND TRADE UNION POINTS OF VIEW AS WELL AS FROM THE POINTS OF VIEW OF MOST INDIVIDUAL EMPLOYEES.

14. FOR THESE REASONS, I WOULD HAVE FOUND THAT THE APPROPRIATE BARGAINING UNIT COMPRISED ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER SAVE AND EXCEPT ASSISTANT FORELADIES, ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FORELADY AND ASSISTANT FOREMAN, OFFICE AND SALES STAFF, EMPLOYEES IN THE ENGINEERING DEPARTMENT, PRODUCTION AND QUALITY CONTROL PERSONNEL, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS AND EMPLOYEES BOUND BY SUBSISTING COLLECTIVE AGREEMENTS.

15. ACCORDINGLY, SINCE LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WHICH I FIND TO BE APPROPRIATE AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON OCTOBER 25TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINED UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT, I WOULD HAVE DISMISSED THE APPLICATION.

1967-67-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 223, I.S.E.I.U., A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. CENTRE GREY GENERAL HOSPITAL (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
H. R. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: JOHN M. ASKIN FOR THE APPLICANT, AND
NORMAN L. MATHEWS, Q.C., AND JOHN HIGGINS FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 20, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION FOR A UNIT COMPRISING EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK.

3. THE RESPONDENT CONTENDED THAT THE PERSONS ON THE LISTS FILED, WITH THE EXCEPTION OF ONE, WERE EMPLOYED INTERMITTENTLY AND MIGHT REFUSE WITH IMPUNITY TO COME IN TO WORK WHEN CALLED. IT REFERRED TO THEM AS "CASUAL" EMPLOYEES. THE RESPONDENT ALSO SUBMITTED THAT SUCH PERSONS, IN ANY EVENT, SHOULD NOT BE INCLUDED IN A UNIT OF EMPLOYEES "REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK".

4. IN ASCERTAINING THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE AND THE MEMBERSHIP COUNT AT THE TIME HEREINAFTER SET OUT, AS REQUIRED UNDER SECTION 7(1) OF THE ACT, THE BOARD, IN ACCORDANCE WITH ITS USUAL POLICY, INCLUDED ALL PERSONS WORKING ON THE DATE THE APPLICATION WAS MADE AND THOSE PERSONS WHO, ALTHOUGH NOT WORKING ON THAT DATE, WORKED AT SOME TIME IN THE MONTH PRECEDING AND IN THE MONTH FOLLOWING THE DATE OF APPLICATION. THIS LATTER GROUP INCLUDES PERSONS WHO WERE NOT SHOWN ON THE LISTS FILED BUT WHOSE EMPLOYMENT HISTORY WAS MADE KNOWN TO THE BOARD BY THE RESPONDENT.

5. IN VIEW OF SOME OF THE SUBMISSIONS MADE BY COUNSEL FOR THE HOSPITAL WITH RESPECT TO PERSONS EMPLOYED INTERMITTENTLY AND TO "PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK", REFERENCE MIGHT BE MADE TO THE BOARD'S DECISION IN THE SYDENHAM HOSPITAL CASE FOUND IN OLRB MONTHLY REPORT, MAY, 1967, P.

135 AND IN PARTICULAR TO PARAGRAPH 4 THEREOF WHICH READS AS FOLLOWS:

"AFTER THE PRELIMINARY ISSUE HAS BEEN DEALT WITH, A SECONDARY QUESTION WHICH MUST ALSO BE CONSIDERED IS WHICH PERSONS ARE 'REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK'. THE QUESTION UNDER CONSIDERATION IS NOT INTENDED TO DISTINGUISH SUCH PERSONS FROM PERSONS WHO ARE 'IRREGULARLY' EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. EITHER THE PERSONS WITH WHOM WE ARE CONCERNED ARE EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK OR THEY ARE EMPLOYED FOR MORE THAN 24 HOURS PER WEEK. THE EMPLOYEES MUST FALL INTO ONE OR OTHER OF THESE TWO CATEGORIES. THERE IS NO THIRD CATEGORY INVOLVED IN THIS QUESTION."

6. WE WOULD POINT OUT THAT THE STATEMENTS MADE BY THE BOARD IN THE FOREGOING PARAGRAPH ARE OF GENERAL APPLICATION AND ARE IN NO WAY RESTRICTED TO THE PARTICULAR FACTS OF THE SYDENHAM HOSPITAL CASE.

7. TO PUT THE MATTER IN ANOTHER WAY THE BOARD, IN THE PRESENT CONTEXT, IS CONCERNED WITH DISTINGUISHING BETWEEN EMPLOYEES WHO, WHEN THEY DO WORK, WORK MORE THAN TWENTY-FOUR HOURS PER WEEK AS A RULE AND EMPLOYEES, WHO, WHEN THEY DO WORK, WORK TWENTY-FOUR HOURS PER WEEK OR LESS AS A RULE. THE QUESTION AS TO WHEN OR HOW OFTEN THEY COME IN TO WORK SUCH HOURS IS NOT, AGAIN IN THE PRESENT CONTEXT, OF IMPORTANCE.

8. ON THE BASIS OF THE FOREGOING THE BOARD PLACES PERSONS WHO ARE EMPLOYED FROM TIME TO TIME IN EITHER ONE OR THE OTHER OF THE TWO CATEGORIES INDICATED IN THE SYDENHAM CASE. AS THAT CASE POINTS OUT, THERE IS NO THIRD CATEGORY FOR WHAT ARE SOMETIMES REFERRED TO AS "CASUAL" EMPLOYEES.

9. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT MARKDALE REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 5TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 7(2) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14010-67-R: INTERNATIONAL JEWELRY WORKERS UNION (APPLICANT) V. M.Z.M. LABORATORY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: ANGEL D. RIVERA FOR THE APPLICANT,
AND B. H. STEWART AND J. MATERA FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 11, 1968.

3. AT THE HEARING HELD BEFORE THE BOARD ON JANUARY 11TH, 1968, ALLEGATIONS WERE MADE WITH RESPECT TO THE LACK OF PAYMENT OF INITIATION FEES TO THE APPLICANT BY TWO EMPLOYEES, NAMELY, HEATHER HEARD AND JOAN BAXTER.

4. THE BOARD HEARD EVIDENCE WITH RESPECT TO THESE ALLEGATIONS AT A HEARING HELD FOR THAT PURPOSE ON FEBRUARY 13TH, 1968.

5. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD IS SATISFIED THAT HEATHER HEARD AND JOAN BAXTER PAID A ONE-DOLLAR INITIATION FEE TO MR. ANGEL D. RIVERA AT THE TIME THAT EACH OF THEM SIGNED HER APPLICATION CARD FOR MEMBERSHIP IN THE APPLICANT.

6. THE APPLICANT HEREIN HAS APPLIED FOR A BARGAINING UNIT DESCRIBED AS FOLLOWS: ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT DENTAL TECHNICIANS, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND SALES STAFF. THE RESPONDENT PROPOSED A BARGAINING UNIT COMPRISING ALL EMPLOYEES WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

7. AT THE HEARING HELD FEBRUARY 13TH, 1968, INQUIRY WAS MADE INTO THE NATURE OF THE OPERATIONS CARRIED ON BY THE RESPONDENT AND THE COMPOSITION OF THE BARGAINING UNIT PROPOSED BY EACH OF THE PARTIES. AS A RESULT OF THIS INQUIRY, THE BOARD REVOKES ITS DECISION OF JANUARY 18TH, 1968, WITH RESPECT TO THE APPOINTMENT OF THE EXAMINER AND,

HAVING REGARD TO WHAT WAS SAID BY COUNSEL FOR BOTH PARTIES, PROPOSES TO DEAL WITH THE APPLICATION ON THE INFORMATION BEFORE IT.

8. BECAUSE OF THE CIRCUMSTANCES OF THIS CASE, IT WOULD PERHAPS BE USEFUL TO POINT OUT THAT AN EXAMINATION OF THE LISTS FILED BY THE RESPONDENT DISCLOSES THAT THE BARGAINING UNIT WHICH THE APPLICANT SEEKS WOULD BE COMPOSED OF DELIVERY DRIVERS AND OFFICE EMPLOYEES. THE APPLICANT ARGUED THAT WHAT HE SOUGHT WAS A TAG-END UNIT. THE ARGUMENT RESTED UPON THE APPLICANT'S SUBMISSION THAT IT OR AN AFFILIATE WAS ABOUT TO ORGANIZE THE LABORATORY EMPLOYEES INTO A UNIT WHICH WOULD EXCLUDE THE EMPLOYEES CLAIMED IN THIS APPLICATION. (AT THE DATE OF THE HEARING NO SUCH UNIT HAD BEEN CERTIFIED NOR HAD ANY APPLICATION FOR CERTIFICATION BEEN MADE.) THE APPLICANT CONTENDED THAT THE BOARD, IN ITS DECISIONS MADE WITH RESPECT TO CERTIFICATION OF EMPLOYEES OF DENTAL LABORATORIES, HAD DETERMINED APPROPRIATE UNITS OF LABORATORY EMPLOYEES FROM WHICH WERE EXCLUDED OFFICE STAFF AND DRIVERS.

9. IT WAS POINTED OUT BY THE BOARD AT THE INITIAL HEARING THAT THE BOARD HAD CERTIFIED UNITS IN DENTAL LABORATORIES AS "ALL DENTAL LABORATORY EMPLOYEES" OR "ALL DENTAL TECHNICAL EMPLOYEES". IN ABOUT HALF OF ITS PREVIOUS DECISIONS THE BOARD HAD ADDED A CLARITY NOTE THAT OFFICE, CLERICAL, SALES AND DELIVERY PERSONNEL WERE EXCLUDED FROM THE UNIT. IN THE PRESENT CASE, HOWEVER, NO SUCH UNIT HAS BEEN CERTIFIED, NOR INDEED HAS CERTIFICATION BEEN SOUGHT FOR SUCH A UNIT. PLAINLY, THEREFORE, THE UNIT SOUGHT BY THE APPLICANT IS NOT A TAG-END UNIT.

10. IN ANY EVENT, THE EVIDENCE DISCLOSES THAT AT THE DATE OF THE HEARING THERE WERE TWO OFFICE WORKERS EMPLOYED BY THE RESPONDENT. ONE OF THESE, HOWEVER, WAS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND IS EXCLUDED FROM THE BARGAINING UNIT ON REQUEST OF THE RESPONDENT. TWO DRIVERS ARE SHOWN ON THE LISTS. ONE OF THE DRIVERS IS LISTED ON SCHEDULE 'C'. IT IS INDICATED THAT SHE WAS LAID OFF ON THE DAY PRIOR TO THE APPLICATION AND, ALTHOUGH RECALLED TO WORK, FAILED TO REPORT FOR DUTY. IN THESE CIRCUMSTANCES THE BOARD, FOLLOWING ITS CUSTOMARY PRACTICE, FINDS THAT THIS PERSON IS NOT AN EMPLOYEE FOR THE PURPOSE OF THE COUNT.

11. THE RESULT OF THE FOREGOING IS THAT THE UNIT SOUGHT BY THE APPLICANT WAS AT THE TIME OF THE APPLICATION COMPOSED OF ONE OFFICE EMPLOYEE AND ONE DRIVER. THE APPLICANT FILED TWO MEMBERSHIP CARDS, ONE OF WHICH STANDS UP.

12. HAVING REGARD TO THE EVIDENCE, THE BOARD DETERMINES THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT DOES NOT CONSTITUTE A UNIT OF EMPLOYEES APPROPRIATE FOR COLLECTIVE BARGAINING, AND THE APPLICATION IS THEREFORE DISMISSED.

1968-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC
(APPLICANT) V. PARK HOUSE (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

APPEARANCES AT HEARING: DONALD G. COLLINS, F. JEAVONS, FOR THE
APPLICANT, LARRY D. SMITH, DOUGLAS CORNFOT FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
F. W. MURRAY: MARCH 29, 1968.

1. BY ITS DECISION DATED FEBRUARY 5TH, 1968, MR. C. F. ROBICHEAU, EXAMINER, WAS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER. ON FEBRUARY 19TH, 1968, THE EXAMINER ADVISED THE BOARD THAT THE PARTIES HAD AGREED THAT THE LIST OF EMPLOYEES FILED BY THE RESPONDENT AS OF JANUARY 19TH, 1968 WAS CORRECT AND THAT A FORMAL REPORT OF THE EXAMINER IN THIS REGARD WAS NOT NECESSARY.

2. THE RESPONDENT, FOLLOWING THE HEARING ON FEBRUARY 5TH, 1968, ALLEGED THAT JOSEPH ALLIETT, ONE OF THE RESPONDENT'S EMPLOYEES HAD NOT PAID THE SUM OF \$1.00 INITIATION FEE AS REQUIRED FOR MEMBERSHIP IN THE APPLICANT UNION. THE BOARD CONDUCTED A PRELIMINARY INVESTIGATION AND THEN SET THE MATTER DOWN FOR CONTINUATION OF HEARING.

3. THE BOARD SUMMONED JOSEPH ALLIETT, THE EMPLOYEE CONCERNED AND JAMES MCKEEGAN, AN EMPLOYEE OF THE RESPONDENT WHOSE NAME APPEARED ON THE APPLICATION FOR MEMBERSHIP CARD AS THE COLLECTOR.

4. JOSEPH ALLIETT TESTIFIED THAT HE SIGNED THE APPLICATION FOR MEMBERSHIP CARD BUT DID NOT SIGN THE RECEIPT ATTACHED TO THE CARD AND DID NOT PAY THE SUM OF \$1.00 TO JAMES MCKEEGAN OR TO ANYONE ELSE. HE COULD NOT REMEMBER THE DATE WHEN THE CARD WAS SIGNED, HOWEVER, HE DID NOT WRITE IN THE DATE WHICH APPEARED ON THE FACE OF THE CARD. THE CARD WAS PRESENTED TO HIM IN THE EVENING AT THE RESPONDENT'S PREMISES BY MCKEEGAN WHO WAS PRESENT WHEN HE SIGNED IT BUT HE STATED THAT MCKEEGAN DID NOT MENTION MONEY AT ALL TO HIM AT THAT TIME. ALTHOUGH A SIGNATURE PURPORTING TO BE ALLIETT'S APPEARS ON THE RECEIPT HE SAID HE DID NOT SIGN THE RECEIPT AND FURTHER HAD NO KNOWLEDGE AS TO WHO MIGHT HAVE SIGNED THE RECEIPT. HE STATED THAT HE DID NOT KNOW THAT THE CARD HE SIGNED WAS A UNION CARD UNTIL ABOUT THREE DAYS LATER WHEN MCKEEGAN TOLD HIM WHAT IT WAS. MCKEEGAN WAS ON DUTY AS BARTENDER AT THE TIME THE CARD WAS SIGNED AND ALLIETT WAS OFF WORK. BOTH HAD BEEN DRINKING BEFORE THE CARD WAS SIGNED.

5. JAMES MCKEEGAN TESTIFIED THAT ALLIETT SIGNED THE CARD AND COUNTERSIGNED THE RECEIPT IN HIS PRESENCE ON AN AFTERNOON IN THE LADIES BEVERAGE ROOM OF THE RESPONDENT'S PREMISES AND ALLIETT HAD AT THAT TIME PAID THE SUM OF \$1.00 TO HIM. HE DID NOT HAVE A DISCUSSION WITH ALLIETT CONCERNING THE CARD THEN AS HE HAD PREVIOUSLY DISCUSSED

THE UNION WITH ALLIETT AND SOME TIME LATER HE TOLD ALLIETT THAT HE HAD SENT THE CARD TO THE UNION OFFICE. McKEEGAN TESTIFIED THAT HE HAD TOLD ALLIETT THAT THE CARD WAS AN APPLICATION FOR UNION MEMBERSHIP AND THEN ALLIETT FILLED OUT THE TOP PART OF THE CARD AND HE FILLED IN THE BALANCE INCLUDING THE DATE. BOTH OF THEM SIGNED THE CARD AND THE RECEIPT. McKEEGAN ASSERTED THAT ALLIETT KNEW EXACTLY WHAT HE WAS SIGNING WHEN HE SIGNED THE CARD AND COUNTERSIGNED THE RECEIPT. McKEEGAN SAID THAT ALLIETT WAS NOT DRINKING WITH HIM AT THAT TIME BUT ADMITTED THAT ALLIETT COULD HAVE BEEN DRINKING IN THE BEVERAGE ROOM BUT COULD NOT RECALL IF HE HAD SOLD HIM A DRINK. McKEEGAN SAID THAT ALTHOUGH HE WAS WORKING THAT DAY HE WAS NOT ON DUTY WHEN THE CARD WAS SIGNED.

6. Mr. JEAVONS, A BUSINESS AGENT FOR THE APPLICANT, TESTIFIED THAT HE WAS IN CHARGE OF THE ORGANIZATION AT THE RESPONDENT'S PREMISES AND HAD INSTRUCTED McKEEGAN HOW TO COMPLETE THE CARDS. HE RECEIVED A NOTE FROM McKEEGAN ENCLOSING TWO CARDS AND THE SUM OF \$2.00. BOTH CARDS, IN HIS OPINION WHEN HE RECEIVED THEM, WERE PROPERLY COMPLETED, SIGNED AND THE SIGNATURES COUNTERSIGNED. A FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS WAS FILED WITH THE BOARD OVER THE SIGNATURE OF DON COLLINS, AN INTERNATIONAL REPRESENTATIVE OF THE APPLICANT IN SUPPORT OF ITS EVIDENCE OF MEMBERSHIP COVERING THREE MEMBERSHIP CARDS. Mr. JEAVONS SAID THAT COLLINS HAD ASKED HIM IF THE CARDS WERE PROPERLY MADE OUT PRIOR TO FILING THE FORM 8, DECLARATION. THERE IS NO INDICATION OF ANY IRREGULARITIES ON THE SAID FORM.

7. IT IS QUITE CLEAR IN THE INSTANT CASE THAT THE APPLICANT ACTED IN GOOD FAITH RELYING ON THE INFORMATION SUPPLIED TO IT AND THERE IS NO QUESTION THAT THE APPLICANT AND ITS OFFICIALS INVOLVED IN THIS MATTER INTENDED TO MISLEAD THE BOARD IN ANY WAY. THE BOARD, HOWEVER, IS FACED WITH THE CONFLICTING TESTIMONY OF TWO EMPLOYEES OF THE RESPONDENT IN CONNECTION WITH A VERY MATERIAL CONSIDERATION IN THE QUALITY OF THE EVIDENCE OF MEMBERSHIP SUBMITTED TO THE BOARD BY THE APPLICANT IN SUPPORT OF THE APPLICATION. THERE IS NO DOUBT THAT ALLIETT SIGNED AN APPLICATION FOR MEMBERSHIP CARD BUT THERE IS DOUBT THAT HE PAID THE SUM OF \$1.00 AND COUNTERSIGNED THE RECEIPT. THE BOARD HAS LONG REQUIRED THAT SUCH RECEIPTS BE COUNTERSIGNED BY THE PERSON PAYING THE MONEY AS WELL AS THE COLLECTOR OF THE MONEY ON BEHALF OF THE TRADE UNION. FAILURE TO MAKE THE MONEY PAYMENT OR TO COUNTERSIGN THE RECEIPT CERTAINLY CAST DOUBT ON THAT PERSON'S DESIRE TO BECOME A MEMBER OF THE TRADE UNION AND COULD BE FATAL TO AN APPLICATION BEFORE THIS BOARD. FOR REFERENCE SEE WEBSTER AIR EQUIPMENT CO. LTD. CASE, 1958 CCH CANADIAN LAW REPORTS, TRANSFER BINDER 55-59, ¶16,110 AND INTERNATIONAL NICKEL CO. CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 698.

8. WE HAVE GIVEN CAREFUL CONSIDERATION TO THE TESTIMONY PRESENTED AT THE HEARING AS WELL AS TO THE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARD ITSELF. IN OUR OPINION IT IS APPARENT ON THE FACE OF THE CARD AND RECEIPT THAT IT IS NOT JOSEPH ALLIETT'S SIGNATURE WHICH APPEARS ON THE RECEIPT AND WE FIND THAT JOSEPH ALLIETT DID NOT COUNTERSIGN THE RECEIPT. HAVING MADE THIS FINDING WE ARE IMPELLED TO ACCEPT

THE EVIDENCE OF ALLIETT THAT HE DID NOT PAY THE SUM OF \$1.00 TO McKEEGAN, THE INDICATED COLLECTOR, OR COUNTERSIGN THE RECEIPT. ACCORDINGLY, ON THE EVIDENCE, WE FIND THAT THERE IS SUFFICIENT DOUBT CAST UPON THE QUALITY OF ALLIETT'S APPLICATION FOR MEMBERSHIP CARD SUBMITTED BY THE APPLICANT THAT WEIGHT CANNOT BE GIVEN TO IT AND IS THEREFORE NOT ACCEPTABLE MEMBERSHIP EVIDENCE FOR THE PURPOSE OF THE INSTANT APPLICATION.

9. THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. AS OF THE DATE OF THE APPLICATION THERE WERE THREE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE HEREIN AND OF THESE, THE APPLICANT SUBMITTED EVIDENCE OF MEMBERSHIP FOR TWO EMPLOYEES. HAVING REGARD, HOWEVER, TO THE FINDING OF THE BOARD SET OUT IN PARAGRAPH 9 ABOVE, THE APPLICANT HAS ACCEPTABLE EVIDENCE OF MEMBERSHIP FOR ONLY ONE EMPLOYEE IN THE BARGAINING UNIT.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 29TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER E. BOYER:

I DISSENT. ON ALL THE EVIDENCE I WOULD HAVE ACCEPTED THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS APPLICATION. THE APPLICANT WOULD THEREFORE BE ENTITLED TO A CERTIFICATE COVERING THOSE EMPLOYEES IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN THIS APPLICATION.

14155-67-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION LOCAL 117 (APPLICANT) V. ROSELAWN PLASTERING CO. LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. B. CUMINE AND A. BURIGANA FOR THE APPLICANT, W. MARMUREK FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 28, 1968.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL PLASTERERS' HELPERS IN BOARD GEOGRAPHIC AREA No. 8.

4. THIS MATTER WAS ORIGINALLY LISTED FOR HEARING ON MARCH 1ST, 1968, FOR THE PURPOSE OF CONSIDERING ALL OUTSTANDING ISSUES INCLUDING THOSE RAISED IN THE BOARD'S DECISIONS IN THE TORONTO PLASTERING COMPANY LIMITED CASE, BOARD FILE No. 14055-67-R, AND THE BELMONT PLASTERING CO. CASE, BOARD FILE No. 14107-67-R. AT THAT HEARING, THE REPRESENTATIVE OF THE APPLICANT SUBMITTED THAT THE UNIT FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION, NAMELY PLASTERERS' HELPERS, IS APPROPRIATE FOR COLLECTIVE BARGAINING AND THAT UNDER THE CONSTITUTION OF ITS PARENT INTERNATIONAL UNION, THE APPLICANT COULD AND HAS TAKEN PLASTERERS' HELPERS INTO MEMBERSHIP. THE REPRESENTATIVE OF THE APPLICANT DID NOT HAVE A COPY OF THE CONSTITUTION AT THE HEARING BUT UNDERTOOK TO FILE ONE WITH THE BOARD. HE DID SO ON MARCH 13TH, 1968.

5. IN LIGHT OF SOME OF THE PROVISIONS CONTAINED IN THE CONSTITUTION OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, THE BOARD DIRECTED THE REGISTRAR TO LIST THE APPLICATION FOR CONTINUATION OF HEARING FOR THE FOLLOWING PURPOSES: (1) TO AFFORD THE APPLICANT AN OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO ITS ABILITY UNDER ITS CONSTITUTION TO TAKE INTO MEMBERSHIP THOSE EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION. (2) TO AFFORD THE APPLICANT AN OPPORTUNITY TO ADDUCE EVIDENCE TO SATISFY THE BOARD THAT THE APPLICANT HAS A HISTORY OF BARGAINING ON BEHALF OF THE CLASSIFICATION OF EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION.

6. AT THE CONTINUATION OF HEARING ON MARCH 25TH, 1968, ANGELO BURIGANA, A BUSINESS AGENT OF THE APPLICANT, AND WILLIAM CLEMENTS, A FORMER OFFICER OF THE APPLICANT, GAVE TESTIMONY CONCERNING THE CONSTITUTION AND THE HISTORY OF THE APPLICANT WITH REGARD TO REPRESENTING PLASTERERS' HELPERS. THE BOARD THEREUPON ENTERTAINED THE REPRESENTATIONS OF COUNSEL FOR THE APPLICANT WITH RESPECT TO THE CONSTITUTION AND THE EVIDENCE ADDUCED AT THE HEARING.

7. SECTION 4(F) OF THE CONSTITUTION PROVIDES THAT ONLY MEMBERS OF A LOCAL UNION WHO ARE CLASSIFIED AS PLASTERERS, CEMENT MASONS AND SHOP HANDS CAN REPRESENT A LOCAL UNION AT CONVENTIONS OF THE PARENT INTERNATIONAL UNION. IN OTHER WORDS, PLASTERERS' HELPERS COULD NOT REPRESENT A LOCAL UNION. IT IS AXIOMATIC IN THIS CIRCUMSTANCE THAT PLASTERERS' HELPERS WOULD NOT BE ABLE TO HOLD ANY OFFICES IN THE INTERNATIONAL UNION. THIS FACT WAS AFFIRMED BY CLEMENTS IN HIS EVIDENCE. MOREOVER, ACCORDING TO CLEMENTS, PLASTERERS' HELPERS COULD NOT HOLD OFFICE IN A LOCAL UNION AND DID NOT EVEN HAVE DUES BOOKS.

8. SECTION 21 OF THE CONSTITUTION PROVIDES SOLELY FOR THE CHARTERING OF LOCAL UNIONS TO REPRESENT ONLY ONE PRIMARY CLASSIFICATION OR MORE THAN ONE PRIMARY CLASSIFICATION. THE PRIMARY CLASSIFICATIONS ARE PLASTERERS, CEMENT MASONS AND SHOP HANDS. PLASTERERS' HELPERS ARE NOT A PRIMARY CLASSIFICATION. MOREOVER, SECTION 28(A) OF THE CONSTITUTION CONTEMPLATES ONLY APPLICATIONS FOR MEMBERSHIP BEING MADE BY JOURNEYMEN PLASTERERS, CEMENT MASONS AND SHOP HANDS AND THEIR APPRENTICES. FURTHER, SECTION 125 OF THE CONSTITUTION PROVIDES THAT NO APPLICANT FOR MEMBERSHIP AS A JOURNEYMAN UNDER ONE OF THE FULL PRIMARY CLASSIFICATIONS SHALL BE INITIATED INTO ANY LOCAL UNION UNLESS AND UNTIL HE HAS COMPLETED HIS TERM OF APPRENTICESHIP TO THE TRADE. PLASTERERS' HELPERS HAVE NO TRAINING AS INDENTURED APPRENTICES.

9. ON THE BASIS OF THE CONSTITUTION, IT CAN BE ARGUED THAT THERE IS NO SPECIFIC BAR AGAINST PLASTERERS' HELPERS BEING TAKEN INTO MEMBERSHIP. IT IS ABUNDANTLY CLEAR, HOWEVER, FROM THE ABOVE REFERRED TO SECTIONS, THAT THE CONSTITUTION DOES NOT PROVIDE FOR OR ENVISAGE LOCAL UNIONS TAKING PLASTERERS' HELPERS INTO MEMBERSHIP. EVEN ASSUMING THAT LOCAL UNIONS CAN TAKE PLASTERERS' HELPERS INTO MEMBERSHIP, THE CONSTITUTION DOES NOT ACCORD TO THEM THE SAME RIGHTS AND PRIVILEGES THAT IT DOES TO THE PRIMARY CLASSIFICATIONS OF PLASTERERS, CEMENT MASONS AND SHOP HANDS.

10. THERE WAS FILED WITH THE BOARD A LETTER DATED APRIL 2ND, 1964, WHICH ON ITS FACE WAS SENT BY THE GENERAL SECRETARY-TREASURER OF THE PARENT INTERNATIONAL UNION TO CHARLES W. IRVINE, AN INTERNATIONAL VICE-PRESIDENT, AUTHORIZING HIM TO NEGOTIATE AN AGREEMENT IN TORONTO IN THE BEST INTERESTS OF THE INTERNATIONAL COVERING THE USE OF PLASTERERS' HELPERS AND TRAINEES. WHILE THE BOARD ALLOWED THE LETTER TO BE FILED AS AN EXHIBIT, WE NOTED AT THE TIME THAT THE LACK OF IDENTIFICATION BY ANYONE HAVING PERSONAL KNOWLEDGE OF THE LETTER PLACED ITS EVIDENTIARY VALUE IN DOUBT. HAVING REGARD TO THE MANNER IN WHICH THE LETTER WAS FILED, THE BOARD IS NOT PREPARED TO PLACE RELIANCE UPON ITS CONTENTS. EVEN ASSUMING, HOWEVER, THAT THE LETTER HAD BEEN PROPERLY IDENTIFIED WE WOULD NOT BE PREPARED TO ACCEPT IT EITHER AS AN INTERPRETATION OF THE CONSTITUTION RELATING TO MEMBERSHIP OR AS INDICATING THE UNION'S PAST PRACTICE WITH REGARD TO THE ADMISSION OF PERSONS AS MEMBERS.

11. WITH RESPECT TO PAST PRACTICE, THE APPLICANT PRIMARILY RELIED ON AN ORIGINAL EXECUTED COLLECTIVE AGREEMENT DATED APRIL 15TH, 1958, WHICH WAS FILED WITH THE BOARD. THIS AGREEMENT, TO WHICH CLEMENTS IS A SIGNATORY AND WHICH WAS IDENTIFIED BY HIM, IS BETWEEN THE UNITED LATHING AND PLASTERING CONTRACTORS ASSOCIATION OF TORONTO AND THE PLASTERER'S HELPERS UNION 117 OF TORONTO. THE RECOGNITION CLAUSE MAKES THE AGREEMENT APPLICABLE TO PLASTERERS' HELPERS AND ITS DURATION CLAUSE PROVIDES THAT IT IS TO REMAIN IN EFFECT UNTIL APRIL 30TH, 1959. CLEMENTS TESTIFIED THAT THE SAME PARTIES ENTERED INTO SUBSEQUENT COLLECTIVE AGREEMENTS COVERING PLASTERERS' HELPERS. NO OTHER AGREEMENTS, HOWEVER, WERE FILED WITH THE BOARD.

12. THE EVIDENCE OF BOTH BURIGANA AND CLEMENTS IS THAT DURING A PERIOD FROM 1958 TO 1961 THE PLASTERER'S HELPERS UNION 117 SIGNED INTO MEMBERSHIP AND REPRESENTED MANY PLASTERERS' HELPERS. IN SUPPORT OF THIS TESTIMONY THERE WAS FILED WITH THE BOARD A CARD ENTITLED "ASSOCIATION OF PLASTERER'S HELPERS - 1959". THE CARD STATED THAT THE PERSON NAMED ON THE CARD "IS A MEMBER IN GOOD STANDING". THERE WAS ALSO FILED WITH THE BOARD A RECEIPT DATED JULY 7TH, 1959, INDICATING THAT THE PERSON NAMED THEREON HAD PAID DUES FOR PARTS OF 1958 AND 1959 TO THE OPERATIVE PLASTERERS' INTERNATIONAL UNION, LOCAL NO. 117. BURIGANA TESTIFIED THAT THE TWO PERSONS NAMED ON THE DOCUMENTS WERE PLASTERERS' HELPERS.

13. THE EVIDENCE OF BOTH BURIGANA AND CLEMENTS IS THAT IN 1961 THE PLASTERERS "HANDED OVER" THE PLASTERERS' HELPERS TO THE LABOURERS' UNION. BURIGANA FURTHER TESTIFIED THAT FROM 1961 UNTIL THE BEGINNING OF 1968 THE APPLICANT DID NOT TAKE INTO MEMBERSHIP ANY PLASTERERS' HELPERS.

14. THERE IS NO EVIDENCE THAT ESTABLISHES THAT THE PLASTERER'S HELPERS UNION 117 WAS OR IS A TRADE UNION OR THAT IT EVEN WAS OR IS A SEPARATE OR INDIVIDUAL ENTITY. BURIGANA AND CLEMENTS TESTIFIED THAT THE PLASTERER'S HELPERS UNION 117 WAS PART AND PARCEL OF THE APPLICANT AND THAT ALL UNION DUES COLLECTED FROM EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT DATED APRIL 15TH, 1958 WERE PAID INTO THE GENERAL FUNDS OF THE APPLICANT. IF, IN FACT, AS IT APPEARS FROM THE EVIDENCE, THE PLASTERER'S HELPERS UNION 117 WAS NOT IN REALITY AN ENTITY OF ANY DESCRIPTION, WE FAIL TO APPRECIATE HOW IT COULD BE A PARTY TO A COLLECTIVE AGREEMENT. THE EVIDENCE IS THAT THE APPLICANT WAS CHARTERED AS A LOCAL UNION BY THE PARENT INTERNATIONAL UNION IN 1957. THE APPLICANT, HOWEVER, IS NOT A PARTY TO THE 1958 COLLECTIVE AGREEMENT.

15. IT MAY BE THAT PLASTERERS' HELPERS WERE SIGNED INTO MEMBERSHIP IN THE PLASTERER'S HELPERS UNION 117 WHICH CAN ONLY BE DESCRIBED AS A "NON-ENTITY". WE ARE NOT SATISFIED, HOWEVER, ON THE BASIS OF EITHER THE VIVA VOCE EVIDENCE OF CLEMENTS AND BURIGANA OR THE SUPPORTING FRAGMENTARY DOCUMENTS IDENTIFIED BY THE LATTER THAT THE APPLICANT ITSELF HAS ANY HISTORY OF ACCEPTING PLASTERERS' HELPERS INTO MEMBERSHIP. EVEN IF WE WERE TO ASSUME THAT DURING THE PERIOD FROM 1958 TO 1961 THAT THE APPLICANT DID ACCEPT PLASTERERS' HELPERS INTO MEMBERSHIP AND DID REPRESENT THEM IN COLLECTIVE BARGAINING, WE CAN ONLY CONCLUDE FROM THE EVIDENCE OF BURIGANA AND CLEMENTS AND THE SUBSEQUENT SEVEN YEAR PERIOD WHEN THE APPLICANT SIGNED NO PLASTERERS' HELPERS INTO MEMBERSHIP THAT THE APPLICANT, IN FACT, RELINQUISHED ANY CLAIM TO JURISDICTION OVER PLASTERERS' HELPERS, WHICH IT MAY HAVE PREVIOUSLY ASSERTED, TO THE LABOURERS' UNION.

16. HAVING REGARD BOTH TO THE CONSTITUTION OF THE PARENT INTERNATIONAL UNION WHICH IS BINDING UPON THE APPLICANT AND THE EVIDENCE ADDUCED AT THE HEARING, THE BOARD FINDS THAT THE APPLICANT DOES NOT HAVE JURISDICTION TO ACCEPT PLASTERERS' HELPERS INTO MEMBERSHIP.

17. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

14157-67-R: LOCAL 90, INT'L. BRO. OF PULP, SULPHITE & PAPER MILL WORKERS
(APPLICANT) V. ANSON GENERAL HOSPITAL (RESPONDENT) V. OFFICE AND PROFESSION-
AL EMPLOYEES INTERNATIONAL UNION, LOCAL 151 (INTERVENER #1) V. INTERNATIONAL
UNION OF DISTRICT 50, U.M.W.A. (INTERVENER #2).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: NORMAN A. PAXTON AND W. ANDERSON FOR THE
APPLICANT, D. R. BYERS FOR THE RESPONDENT, NO-ONE FOR INTERVENER #1,
AND PAT GRASSO AND EARL J. CALANDRO FOR INTERVENER #2.

DECISION OF THE BOARD: MARCH 8, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. BY LETTER DATED FEBRUARY 15TH, 1968, THE REGISTRAR ADVISED THE
APPLICANT THAT, SINCE IT APPEARED FROM A CHECK OF THE BOARD'S FILES THAT
THE BOARD HAS NOT FOUND THE APPLICANT TO BE A TRADE UNION WITHIN THE
MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT, THE APPLICANT
SHOULD BE PREPARED TO SATISFY THE BOARD AT THE HEARING THAT IT WAS A
TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

3. THE ONLY EVIDENCE PRODUCED BY THE APPLICANT WITH RESPECT TO ITS
STATUS AS A TRADE UNION CONSISTED OF WHAT PURPORTS TO BE A CURRENT COLLEC-
TIVE AGREEMENT MADE BETWEEN ABITIBI PAPER COMPANY LTD., IROQUOIS FALLS
DIVISION, AND "THE FOLLOWING INTERNATIONAL UNIONS". AMONG THE UNIONS
LISTED IS, INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL
WORKERS LOCAL 90. IT WAS SUBMITTED THAT THIS WAS ABOUT THE FIFTIETH
SUCH AGREEMENT BETWEEN THE PARTIES.

4. IT MUST BE PATENT THAT THE EXISTENCE OF AN AGREEMENT, EVEN
THOUGH IT HAS THE APPEARANCE OF A COLLECTIVE AGREEMENT, CANNOT, OF ITSELF
AND WITHOUT FURTHER SUBSTANTIAL EVIDENCE, BE ACCEPTED AS ESTABLISHING
THAT ONE OF THE SIGNATORIES THERETO IS A TRADE UNION WITHIN THE MEANING
OF THE LABOUR RELATIONS ACT. THE BOARD, THEREFORE, IS NOT SATISFIED ON
THE BASIS OF THE EVIDENCE PRESENTED TO IT THAT LOCAL 90, INTERNATIONAL
BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS IS A TRADE UNION
WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. IN
THE PRESENT CASE THERE IS THE FURTHER COMPLICATION, WHICH NEED NOT BE
ELABORATED UPON, ARISING FROM THE WORDING OF THE AGREEMENT ALREADY
QUOTED INDICATING THAT THE AGREEMENT IS WITH THE INTERNATIONAL UNION.

5. IT SHOULD ALSO BE NOTED THAT THE APPLICATION IS BROUGHT BY
LOCAL 90 OF INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL
WORKERS; WHEREAS THE MEMBERSHIP EVIDENCE RELATES TO INTERNATIONAL
BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS WITHOUT REFERENCE
TO THE LOCAL. THIS IN ITSELF IS FATAL TO THE APPLICATION.

6. FOR ALL OF THE FOREGOING REASONS THE APPLICATION IS DISMISSED.

14177-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED (RESPONDENT) V. A. & M. EMPLOYEES' ASSOCIATION (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: S. L. ROBINS, Q.C., J. B. WATERMAN, W. FRASER AND D. DEAN FOR THE APPLICANT, A. J. CLARK AND K. L. HAMER FOR THE RESPONDENT, WILLIAM J. HEMMERICK, Q.C., FOR THE INTERVENER.

DECISION OF THE BOARD: MARCH 20, 1968.

1. THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT ON FEBRUARY 20TH, 1968. THE TERMINAL DATE FIXED FOR THIS APPLICATION WAS FEBRUARY 27TH, 1968.
2. THE INTERVENER FILED AN APPLICATION FOR CERTIFICATION BY INTERVENER (FORM 12) SUBSEQUENT TO THE TERMINAL DATE IN THIS APPLICATION AND FILED WITH ITS INTERVENTION CERTAIN MEMBERSHIP DOCUMENTS. SINCE THE MEMBERSHIP DOCUMENTS WERE FILED SUBSEQUENT TO THE TERMINAL DATE, THE REGISTRAR, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 48(1) OF THE BOARD'S RULES OF PROCEDURE AND THE BOARD'S USUAL PRACTICE, RETURNED THE INTERVENER'S MEMBERSHIP DOCUMENTS WHICH WERE ALL FILED SUBSEQUENT TO THE TERMINAL DATE.
3. THE INTERVENER'S COUNSEL RE-FILED THE DOCUMENTS AND ATTENDED AT THE HEARING IN THIS MATTER AND REQUESTED THE BOARD TO PERMIT THE LATE FILINGS IN THE SPECIAL CIRCUMSTANCES THAT EXISTED AND ENTERTAIN THE INTERVENER'S APPLICATION FOR CERTIFICATION.
4. AT THE HEARING, THE INTERVENER'S COUNSEL STATED THAT HE HAD WITNESSES IN ATTENDANCE WHO WERE PREPARED TO TESTIFY THAT HIS LAW FIRM HAD BEEN RETAINED BY THE INTERVENER AND TO THE OTHER EVENTS WHICH ARE HEREINAFTER RELATED. FOLLOWING THE RECEIPT BY HIM OF THE BALANCE OF THE INTERVENER'S MEMBERSHIP EVIDENCE, HE DRAFTED THE INTERVENER'S APPLICATION FOR CERTIFICATION (FORM 12) AND FORWARDED THAT DOCUMENT TOGETHER WITH THE INTERVENER'S MEMBERSHIP DOCUMENTS SUPPORTED BY A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) TO THE BOARD BY REGISTERED MAIL. ALL THE DOCUMENTS WERE PLACED IN A PROPERLY ADDRESSED ENVELOPE AND SEALED. IN ACCORDANCE WITH HIS LAW FIRM'S REGULAR PRACTICE, ONE OF THE FIRM'S EMPLOYEES LEFT THE OFFICE AT 4:30 P.M. ON TUESDAY, FEBRUARY 27TH (THE TERMINAL DATE) WITH INSTRUCTIONS TO ATTEND AT THE POST OFFICE TO REGISTER THE LETTER TO THE BOARD. THE EMPLOYEE, UNKNOWN TO THE INTERVENER'S COUNSEL, FAILED TO REGISTER THE LETTER TO THE BOARD ON FEBRUARY 27TH AND TOOK THE TRAIN TO HER HOME. THE EMPLOYEE RETURNED TO WORK THE FOLLOWING MORNING, AND REGISTERED THE LETTER AT THE POST OFFICE ON HER WAY TO WORK ON FEBRUARY 28TH, 1968, THE DAY FOLLOWING THE TERMINAL DATE. THE LETTER WAS DELIVERED BY THE POST OFFICE TO THE BOARD ON FEBRUARY 28TH. IT WOULD APPEAR THAT THE

BOARD ACTUALLY RECEIVED THE REGISTERED LETTER ON THE SAME DAY THAT IT WOULD HAVE RECEIVED IT HAD THE EMPLOYEE MAILED THE LETTER AT 4:30 P.M. ON THE TERMINAL DATE.

5. COUNSEL FOR THE INTERVENER ALSO ADVISED THE BOARD THAT THE MEMBERSHIP EVIDENCE AS FILED WAS IN THE SAME ENVELOPE AND IN THE SAME STATE AS WHEN FIRST RECEIVED BY THE EMPLOYEE ON FEBRUARY 27TH AND THAT THE CONTENTS HAD NOT BEEN TAMPERED WITH.

6. THE BOARD INVITED THE PARTIES TO ADDRESS ARGUMENT TO THE BOARD ON THE QUESTION WHETHER THE BOARD SHOULD WAIVE THE REQUIREMENTS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE IN THE CIRCUMSTANCES OF THIS CASE OR EXTEND THE TERMINAL DATE. FOR THE PURPOSE OF ARGUMENT, THE BOARD ASSUMED THAT ALL THE FACTS ALLEGED BY COUNSEL FOR THE INTERVENER HAD BEEN PROVED.

7. COUNSEL FOR THE INTERVENER ARGUED THAT NO ONE HAD BEEN PREJUDICED IN THE CIRCUMSTANCES OUTLINED ABOVE AND THAT THE BOARD SHOULD THEREFORE PERMIT THE LATE FILING OF THE MEMBERSHIP EVIDENCE AND ENTERTAIN THE INTERVENER'S APPLICATION FOR CERTIFICATION. IT WAS HIS SUBMISSION THAT HIS CLIENT SHOULD NOT BE PREJUDICED IN ANY WAY BY THE MISTAKE WHICH HAD TAKEN PLACE AND FOR WHICH HE PERSONALLY ACCEPTED FULL RESPONSIBILITY.

8. COUNSEL FOR THE RESPONDENT, WHILE AGREEING WITH THE BOARD'S USUAL PRACTICE OF INSISTING ON STRICT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 48 OF THE BOARD'S RULES, WAS OF OPINION THAT THE FACTS OF THIS CASE CLEARLY ESTABLISHED THAT NO ONE HAD GAINED AN ADVANTAGE BY THE DELAY IN REGISTRATION AND THAT THE INTERVENER'S APPLICATION SHOULD NOT BE DEFEATED BECAUSE OF A PROCEDURAL TECHNICALITY.

9. COUNSEL FOR THE APPLICANT SYMPATHIZED WITH THE PREDICAMENT WITH WHICH THE INTERVENER'S COUNSEL FOUND HIMSELF BUT OPPOSED THE INTERVENER'S REQUEST ON THE GROUND THAT THE APPLICANT HAD PREPARED ITSELF FOR A TWO-PARTY PROCEEDING AND IF IT WERE NOW FACED WITH AN INTERVENER'S APPLICATION IT WOULD BE FORCED TO REQUEST AN ADJOURNMENT AND SUCH DELAY WOULD BE PREJUDICIAL.

10. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD ADVISED THE PARTIES AT THE HEARING THAT FOR REASONS TO BE GIVEN IN WRITING THE BOARD WAS OF OPINION THAT IT SHOULD NOT DEPART FROM ITS USUAL PRACTICE OF INSISTING ON STRICT COMPLIANCE WITH THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE. THE BOARD THEREFORE REFUSED TO ACCEPT ANY EVIDENCE OF MEMBERSHIP FILED BY THE INTERVENER SUBSEQUENT TO THE TERMINAL DATE AND FURTHER, THE BOARD DID NOT DEEM IT ADVISABLE TO EXTEND THE TERMINAL DATE IN THE CIRCUMSTANCES OF THIS CASE.

11. SECTION 50 OF THE BOARD'S RULES OF PROCEDURE DEALING WITH THE REQUIREMENTS OF FILING READS, IN PART, AS FOLLOWS:

50.--(1) WHERE A DOCUMENT IS REQUIRED TO BE FILED BY THESE RULES, FILING SHALL BE DEEMED TO BE MADE,

(A) AT THE TIME IT IS RECEIVED BY THE BOARD; OR

(B) WHERE IT IS MAILED BY REGISTERED MAIL ADDRESSED TO THE BOARD AT ITS OFFICE AT 8 YORK STREET, TORONTO 1, ONTARIO, AT THE TIME IT IS MAILED.

12. THE RELEVANT PORTIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE READ AS FOLLOWS:

48.--(1) EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION TERMINATING BARGAINING RIGHTS UNLESS THE EVIDENCE IS IN WRITING; SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES, AS THE CASE MAY BE, AND,

(A) IS ACCOMPANIED BY,

(i) THE RETURN MAILING ADDRESS OF THE PERSON WHO FILES THE EVIDENCE, OBJECTION OR SIGNIFICATION, AND

(ii) THE NAME OF THE EMPLOYER; AND

(B) IS FILED NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION.

(2) NO ORAL EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL BE ACCEPTED BY THE BOARD EXCEPT TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE REFERRED TO IN SUBSECTION 1.

13. IT IS TO BE NOTED THAT THE PROVISIONS OF SECTION 48 ARE MANDATORY PROVISIONS IN THAT THEY READ "EVIDENCE OF MEMBERSHIP ... SHALL NOT BE ACCEPTED BY THE BOARD ... UNLESS THE EVIDENCE ... IS FILED NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION." THE MANDATORY REQUIREMENT OF FILING OR OR BEFORE THE TERMINAL DATE WAS CLEARLY NOT SATISFIED BY THE INTERVENER IN THE INSTANT CASE.

14. WHILE THE BOARD ACTUALLY RECEIVED THE DOCUMENTS ON THE SAME DAY THAT IT WOULD HAVE ACTUALLY RECEIVED THEM HAD THEY BEEN MAILED REGISTERED MAIL BY THE EMPLOYEE ON THE TERMINAL DATE, THIS FACT CANNOT ALTER THE SITUATION. IN ALL LIKELIHOOD, HAD THE EMPLOYEE MAILED THE DOCUMENTS BY

ORDINARY MAIL ON THE TERMINAL DATE, THEY WOULD HAVE BEEN DELIVERED TO THE BOARD AT THE SAME TIME. IF THE DOCUMENTS HAD BEEN MAILED BY ORDINARY MAIL THEY WOULD BE DEEMED TO HAVE BEEN FILED ON THE DATE ACTUALLY RECEIVED BY THE BOARD, IN THE SAME MANNER AS THE DOCUMENTS MAILED REGISTERED MAIL ON THE DATE SUBSEQUENT TO THE TERMINAL DATE ARE ALSO DEEMED TO HAVE BEEN FILED ON THAT DATE.

15. WHILE IT APPEARS CLEAR THAT THE BOARD IS EMPOWERED UNDER SECTION 59 OF THE BOARD'S RULES OF PROCEDURE TO WAIVE ANY DEFECT IN FORM OR ANY TECHNICAL IRREGULARITY, THE LATE FILING OF THE MEMBERSHIP EVIDENCE IS NOT A MERE DEFECT IN FORM OR TECHNICAL IRREGULARITY BUT IS A MATTER OF SUBSTANCE. THE TERMINAL DATE IS ALSO THE MEMBERSHIP DATE FOR DETERMINING THE UNION'S MEMBERSHIP POSITION AND THE BOARD HAS CONSISTENTLY REQUIRED STRICT COMPLIANCE WITH THE REQUIREMENTS OF SECTION 48 OF THE RULES SINCE THE WHOLE APPLICATION TURNS ON THE TERMINAL DATE AND WHAT FLOWS FROM IT.

16. WHILE THE BOARD CAN, AND ON OCCASION HAS HAD CAUSE TO, EXTEND THE TERMINAL DATE IN A PROCEEDING, IT ONLY DOES SO WHERE A PARTY OTHERWISE WOULD BE DEPRIVED OF ITS RIGHTS THROUGH NO FAULT OF ITS OWN. IN THE BREITHAUPT LEATHER COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1966, P. 734, THE BOARD EXTENDED THE TERMINAL DATE IN AN APPLICATION FOR CERTIFICATION AT THE REQUEST OF AN EMPLOYEE WHERE POSTING OF NOTICE TO EMPLOYEES OF THE APPLICATION HAD BEEN DELAYED AND ADEQUATE NOTICE OF THE APPLICATION WAS THEREFORE NOT GIVEN TO THE EMPLOYEES. IN THAT CASE, THE BOARD STATED AS FOLLOWS:

HAVING CONSIDERED ALL OF THE CIRCUMSTANCES IN THIS CASE THE BOARD ACCEDES TO THE REQUEST MADE BY SKINKLE TO EXTEND THE TERMINAL DATE. IN ARRIVING AT THIS DECISION, THE BOARD HAS TAKEN INTO ACCOUNT THE FACT THAT THE POSTING OF THE NOTICE TO EMPLOYEES OF THE APPLICATION ONLY TOOK PLACE A DAY PRIOR TO THE TERMINAL DATE. IN THIS CONNECTION, WE NOTE THAT THE BARGAINING UNIT CONCERNED IN THE APPLICATION IS COMPOSED OF MORE THAN 50 EMPLOYEES. MOREOVER, THERE IS EVIDENCE BEFORE THE BOARD TO INDICATE THAT A GROUP OF EMPLOYEES HAD ENDEAVOURED TO FILE A STATEMENT OF DESIRE IN ACCORDANCE WITH THE PROCEDURE SET OUT IN FORM 5. AS WELL, THE REQUEST FOR THE EXTENSION OF THE TERMINAL DATE HAS BEEN MADE BY AN EMPLOYEE PURPORTING TO REPRESENT A GROUP OF EMPLOYEES. FINALLY, THERE IS NO EVIDENCE TO SUGGEST THAT DELAY IN POSTING WAS BY DESIGN OR CULPABLE CARELESSNESS ON THE PART OF THE RESPONDENT. THE TERMINAL DATE ACCORDINGLY IS EXTENDED, FOR ALL PURPOSES, TO JANUARY 6TH, 1967.

WE WOULD STRESS, HOWEVER, THAT THE BOARD IS ONLY PREPARED TO GRANT AN EXTENSION OF THE TERMINAL DATE IN ANY APPLICATION IN EXTRAORDINARY CIRCUMSTANCES, WHERE TO DO OTHERWISE MIGHT UNFAIRLY AFFECT THE POSITION OR RIGHTS OF PARTIES OR PERSONS HAVING AN INTEREST

IN THE PROCEEDING. WE WOULD ADD THAT WHERE ANY PARTY OR PERSONS HAVE FAILED TO FULFIL ANY OBLIGATION UPON THEM WHICH ADVERSELY AFFECTS THEIR POSITION THE BOARD WILL NOT PERMIT THE PARTY OR PERSONS CONCERNED TO GAIN BY THEIR OWN SHORTCOMINGS. IT HARDLY NEED BE SAID THAT IF THE TERMINAL DATE ESTABLISHED IN PROCEEDINGS COULD, WITH FACILITY, BE EXTENDED, THE DISRUPTION TO THE BOARD'S PROCEDURES AND THE RESULTING HARDSHIPS TO ALL PARTIES IS NOT DIFFICULT TO ENVISAGE.

17. WHILE COUNSEL FOR THE INTERVENER ARGUED THAT HIS CLIENT SHOULD NOT BE SADDLED WITH HIS MISTAKE OR THE MISTAKE OF HIS EMPLOYEE, THE BOARD IS OF OPINION THAT A CLIENT MUST ASSUME RESPONSIBILITY FOR THE MISTAKE OF HIS SOLICITOR. IT CANNOT SERIOUSLY BE ARGUED THAT LEGAL COUNSEL CAN MAKE MISTAKES WITH IMPUNITY OR THAT THEIR MISTAKES DO NOT CARRY THE SAME WEIGHT AS SIMILAR MISTAKES MADE PERSONALLY BY A PARTY. WE ARE OF THE VIEW THAT COUNSEL'S RESPONSIBILITIES ARE NO LESS ONEROUS THAN THE RESPONSIBILITIES IMPOSED UPON A PARTY IN ANY PROCEEDING AND A PARTY CANNOT EVADE THE RESULTS OF MISTAKES MADE BY COUNSEL RETAINED BY THE PARTY.

18. IN THIS REGARD, WE ADOPT THE VIEW EXPRESSED BY THE BOARD IN CANADIAN STEBBINS ENGINEERING & MANUFACTURING CO. LTD. CASE, U.I.M.B. MONTHLY REPORT, JULY 1965, P. 280, WHEREIN AN EMPLOYEE OF THE RESPONDENT IN THAT CASE HANDED A PETITION TO AN EMPLOYEE OF THE DEPARTMENT OF LABOUR (NOT OF THE ONTARIO LABOUR RELATIONS BOARD) AND REQUESTED THAT EMPLOYEE TO DELIVER THE PETITION TO THE BOARD. THE DEPARTMENT OF LABOUR EMPLOYEE FILED THE PETITION WITH THE BOARD SUBSEQUENT TO THE TERMINAL DATE AND THE BOARD IN THAT CASE STATED AS FOLLOWS:

IN OUR VIEW, THE INFORMATION AND INSTRUCTIONS CONTAINED IN THE FORM IN QUESTION ARE CLEAR IN EVERY RESPECT. THERE IS NOTHING IN THE FORM WHICH WOULD IN ANY WAY SUGGEST TO AN EMPLOYEE THAT HE ADOPT THE COURSE OF ACTION TAKEN BY MR. BROOME. WE ARE NOT PREPARED, THEREFORE, TO REGARD HIS ACTIONS IN ANY DIFFERENT LIGHT THAN IF, SAY, HE HAD ASKED A LAWYER COMING TO TORONTO TO DELIVER THE DOCUMENT TO THE BOARD AND THE LAWYER FAILED TO DO SO. HAVING REGARD TO THE CLEAR INSTRUCTIONS ON THE FORM, THE BOARD WOULD NOT ACCEPT A REQUEST TO REVIEW THE LATE FILING OF A DOCUMENT IN THOSE CIRCUMSTANCES. SIMILARLY, IN THE PRESENT CASE, WE MUST REJECT SUCH A REQUEST. ALTHOUGH AWARE OF FORM 57, MR. BROOME, FOR REASONS BEST KNOWN TO HIMSELF, VOLUNTARILY DECIDED TO PROCEED IN A WAY NOT ENVISAGED OR SUGGESTED BY FORM 57. HE CANNOT NOW BE HEARD TO COMPLAINT THAT HIS ACTIONS, EVEN THOUGH UNDERTAKEN IN GOOD FAITH, DID NOT BRING ABOUT THE RESULT THAT HE HAD HOPED FOR.

19. IN THE INSTANT CASE, THE REQUIREMENTS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE WERE KNOWN TO THE INTERVENER'S COUNSEL AND WHILE HE ATTEMPTED TO COMPLY WITH THEM, THROUGH MISADVENTURE, FAILED TO DO SO.

20. AS STATED EARLIER, THE BOARD HAS CONSISTENTLY INSISTED ON STRICT COMPLIANCE WITH THE MANDATORY REQUIREMENTS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE AND HAS REFUSED TO ADOPT THE PRACTICE OF PERMITTING THE FILING OF MEMBERSHIP EVIDENCE SUBSEQUENT TO THE TERMINAL DATE, WHETHER SUCH LATE FILING IS CAUSED BY ERROR OR MIS-UNDERSTANDING OF THE BOARD'S REQUIREMENTS. IN THIS REGARD, SEE DOESMC REALTY LTD. CASE, O.L.R.B. MONTHLY REPORT, JULY 1966, P. 278; KINGSTON TRANSPORTS LTD. CASE, O.L.R.B. MONTHLY REPORT, APRIL 1965, P. 27; LANARK MILLS LTD. CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1965, P. 356; FORBES TAVERN CASE, BOARD FILE NO. 12429-66-R, DECISION DATED DECEMBER 5, 1966; J. E. RUMBALL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1965, P. 524; E & M LATHING CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 209; FALCONBRIDGE NICKEL MINES CASE, O.L.R.B. MONTHLY REPORT, JULY 1966, P. 259, AND T. ZELMER CONSTRUCTION Co. LTD. CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 541.

21. FOR THE FOREGOING REASONS AND THE REASONS SET OUT IN THE CASES REFERRED TO, THE BOARD IS OF OPINION THAT IT SHOULD NOT DEPART FROM ITS USUAL PRACTICE IN THE INSTANT CASE AND ACCORDINGLY REFUSES TO PERMIT THE INTERVENER TO FILE ITS MEMBERSHIP EVIDENCE SUBSEQUENT TO THE TERMINAL DATE OF THIS APPLICATION OR EXTEND THE TERMINAL DATE OF THIS APPLICATION TO PERMIT SUCH FILING. SINCE THE INTERVENER'S APPLICATION FOR CERTIFICATION AND ITS MEMBERSHIP EVIDENCE WERE FILED SUBSEQUENT TO THE TERMINAL DATE OF THIS APPLICATION, THE APPLICATION OF THE INTERVENER IS THEREFORE DISMISSED.

22. THE APPLICANT IN ITS APPLICATION FOR CERTIFICATION (FORM 1) CLAIMED THAT THE FOLLOWING UNIT OF EMPLOYEES OF THE RESPONDENT WAS APPROPRIATE FOR COLLECTIVE BARGAINING: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." THE RESPONDENT IN ITS REPLY ALSO CLAIMED THAT "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO" WAS THE APPROPRIATE BARGAINING UNIT.

23. AT THE HEARING, PRIOR TO THE ANNOUNCEMENT OF THE NUMBERS ON THE LISTS OF EMPLOYEES FILED BY THE RESPONDENT AS OF THE DATE THE APPLICATION WAS MADE AND THE NUMBER OF MEMBERSHIP CARDS FILED BY THE APPLICANT AS OF THE TERMINAL DATE, THE APPLICANT REQUESTED LEAVE TO CONFINE ITS PROPOSED BARGAINING UNIT TO TWO STREET ADDRESSES IN METROPOLITAN TORONTO WHERE THE RESPONDENT CARRIED ON BUSINESS.

24. THE RESPONDENT ADVISED THE BOARD THAT IT CARRIED ON BUSINESS AT FIVE OR SIX LOCATIONS IN METROPOLITAN TORONTO AND THAT THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN ITS APPLICATION, WHICH WAS AGREED TO BY THE RESPONDENT IN ITS REPLY, WAS THE APPROPRIATE BARGAINING UNIT. THE RESPONDENT STRENUOUSLY OBJECTED TO THE APPLICANT BEING GRANTED LEAVE TO AMEND ITS PROPOSED BARGAINING UNIT AT THAT STAGE OF THE PROCEEDINGS.

25. IT IS THE BOARD'S USUAL PRACTICE TO ASK EACH PARTY AT THE HEARING, IN AN APPLICATION FOR CERTIFICATION PROCEEDING, WHETHER THEY HAVE ANY REPRESENTATIONS TO MAKE WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT. PARTIES ARE NOT ONLY INVITED TO MAKE REPRESENTATIONS BUT REGULARLY ALTER THEIR ORIGINAL POSITION, EITHER BY ADDING MORE CLASSIFICATIONS TO THE LIST OF PROPOSED EXCLUSIONS OR BY CHANGING THE PROPOSED GEOGRAPHIC AREA. THE BOARD HAS JURISDICTION UNDER SECTION 6 OF THE ACT TO DETERMINE THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING. WHERE THE PARTIES CANNOT AGREE AT THE HEARING ON THE DESCRIPTION OF THE BARGAINING UNIT OR IF AN AGREED DESCRIPTION CONFLICTS WITH THE BOARD'S USUAL PRACTICE IN SIMILAR CASES, THE BOARD USUALLY APPOINTS AN EXAMINER TO MAKE THE NECESSARY INQUIRIES AND OBTAIN THE NECESSARY EVIDENCE TO PERMIT THE BOARD TO RESOLVE THE ISSUES IN DISPUTE BETWEEN THE PARTIES.

26. ALTHOUGH THE APPLICANT HAS CHANGED ITS POSITION FROM THAT ADOPTED IN ITS APPLICATION FOR CERTIFICATION, THE APPLICANT HAS NOT GAINED ANY ADVANTAGE BY DOING SO SINCE THE ULTIMATE DECISION AS TO THE APPROPRIATENESS OF THE BARGAINING UNIT RESTS WITH THE BOARD. THE BOARD HAS NEVER TREATED THE QUESTION OF PROPOSED BARGAINING UNITS AS FROZEN BY THE STATEMENTS APPEARING IN THE APPLICATION AND REPLIES FILED BY THE PARTIES.

27. SINCE IT IS IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE TO PERMIT PARTIES TO MAKE REPRESENTATIONS AS TO THE APPROPRIATENESS OF BARGAINING UNITS AND TO ALTER THEIR POSITIONS AS THEY SEE FIT, THE BOARD SEES NO REASON, ON THE FACTS OF THE INSTANT CASE, TO DEPART FROM ITS USUAL PRACTICE OF APPOINTING AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE MATTERS THAT ARE IN ISSUE BETWEEN THE PARTIES.

28. MR. A. A. MORROW, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND IN PARTICULAR ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER AND TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES, EMPLOYMENT STATUS AND COMMUNITY OF INTEREST OF ALL PERSONS WITH RESPECT TO WHOM THE PARTIES ARE UNABLE TO REACH AGREEMENT.

14255-67-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 81 (APPLICANT) V. LAKEHEAD UNIVERSITY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: T. E. ARMSTRONG AND D. BARCLAY FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, MRS. RUTH DUNDAS FOR THE OBJECTORS.

DECISION OF THE BOARD: MARCH 29, 1968.

1. THE EVIDENCE IN THIS CASE ESTABLISHED THAT THE OFFICE EMPLOYES INTERNATIONAL UNION AT ITS CONVENTION IN JUNE 1965 CHANGED ITS NAME TO OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION. THE OFFICE EMPLOYES INTERNATIONAL UNION HAD BEEN PREVIOUSLY RECOGNIZED BY THIS BOARD AS A UNION CAPABLE OF CHARTERING LOCAL UNIONS AND THE FACT THAT IT CHANGED ITS NAME TO OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION IN NO WAY ALTERS ITS RECOGNIZED POWER TO CHARTER LOCAL UNIONS.

2. THE 1965 CONVENTION CHANGING THE NAME OF OFFICE EMPLOYES INTERNATIONAL UNION TO OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION ALSO AUTHORIZED A SIMILAR CHANGE IN NAME OF ALL DIRECTLY CHARTERED LOCALS OF OFFICE EMPLOYES INTERNATIONAL UNION. ALTHOUGH ALL LOCAL UNIONS CHARTERED BY OFFICE EMPLOYES INTERNATIONAL UNION RETAINED THEIR ORIGINAL CHARTER, HOWEVER NEW SEALS WERE PROVIDED TO LOCAL UNIONS CONTAINING THE NEW DESIGNATION "OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION". IT WOULD THEREFORE APPEAR THAT THE APPLICANT, ORIGINALLY CHARTERED AS OFFICE EMPLOYES INTERNATIONAL UNION LOCAL 81, IS NOW KNOWN AS OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL 81. A SIMILAR CHANGE IN NAME OF OTHER DIRECTLY CHARTERED LOCALS OF OFFICE EMPLOYES INTERNATIONAL UNION HAS BEEN MADE.

3. SINCE THE APPLICANT IN THIS CASE IS A DIRECTLY CHARTERED LOCAL OF OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (FORMERLY KNOWN AS OFFICE EMPLOYES INTERNATIONAL UNION) AND HAD DULY ELECTED OFFICERS AT THE TIME THIS APPLICATION WAS MADE, THE BOARD THEREFORE FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. MR. J. R. HENDERSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER AND ON THE DUTIES AND RESPONSIBILITIES OF RUTH DUNDAS.

14271-67-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GRANITE CLUB LIMITED
(RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101
(INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: I. J. THOMSON AND K. BATES FOR THE
APPLICANT, H. S. MCLEAN FOR THE RESPONDENT, A. BEKERMANN FOR THE
INTERVENER.

DECISION OF THE BOARD: MARCH 29, 1968.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL PARKING LOT EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT THE SUPERVISOR.

4. NO EVIDENCE WAS ADDUCED TO SHOW THAT PARKING LOT EMPLOYEES HAVE EVER BEEN REPRESENTED SEPARATE AND APART FROM OTHER EMPLOYEES IN THE TYPE OF BUSINESS CARRIED ON BY THE RESPONDENT. FURTHER, THE APPLICANT FAILED TO SATISFY THE BOARD THAT THE UNIT FOR WHICH IT IS APPLYING IS AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING (SEE JULES FINE ENTERPRISES LIMITED CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1967, P. 75).

5. THE BOARD IS THEREFORE SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF THE PARTIES THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT THE BOARD MIGHT DEEM TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE. WERE MEMBERS OF THE APPLICANT ON MARCH 18TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. THE APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - TERMINATION

14117-67-R: GENERAL MOTORS PRODUCTS OF CANADA, LIMITED (APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS J.E.C. ROBINSON AND P.J. O'KEEFFE.

APPEARANCES AT HEARING: C. R. OSLER FOR THE APPLICANT, ROBERT WHITE, GEORGE SPECHT FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFFE: MARCH 26, 1968.

1. THIS IS AN APPLICATION BY THE EMPLOYER COMPANY FOR A DECLARATION TERMINATING BARGAINING RIGHTS OF THE RESPONDENT UNION MADE PURSUANT TO SECTION 45 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT WAS CERTIFIED BY THE BOARD FOR A UNIT OF EMPLOYEES OF THE RESPONDENT ON NOVEMBER 23RD, 1967. ON NOVEMBER 28TH, 1967 THE RESPONDENT BY TELEGRAM GAVE NOTICE TO THE APPLICANT PURSUANT TO SECTION 11 OF THE LABOUR RELATIONS ACT OF ITS DESIRE TO BARGAIN FOR A COLLECTIVE AGREEMENT. SUBSEQUENTLY, THE PARTIES HERETO MET ON FRIDAY, DECEMBER 8TH 1967 AT LONDON. THE APPLICANT ALLEGES THAT THE RESPONDENT DID NOT ATTEMPT TO NEGOTIATE A COLLECTIVE AGREEMENT FOLLOWING THE MEETING OF DECEMBER 8TH AND ALLOWED 60 DAYS TO ELAPSE THEREBY CONTRAVENING THE PROVISIONS OF SECTION 45(2) OF THE ACT. THE RESPONDENT DENIES THIS

ALLEGATION AND SUBMITS THAT THE APPLICATION IS UNTIMELY.

3. THE EVIDENCE OF THE APPLICANT IS THAT AFTER RECEIVING THE TELEGRAM ON NOVEMBER 28TH, 1967 THERE WAS A MEETING HELD ON DECEMBER 8TH, 1967 AT WHICH REPRESENTATIVES OF MANAGEMENT AND THE UNION WERE PRESENT. THE FINAL ORDER OF BUSINESS AT THAT MEETING WAS TO DESIGNATE MR. MARTIN, ONE OF THE UNION'S BARGAINING COMMITTEE MEMBERS, TO CONTACT MR. KUDLA, THE RESPONDENT'S PARTS AND ACCESSORIES MANAGER, TO ARRANGE A DATE FOR THE NEXT MEETING. MR. KUDLA TESTIFIED THAT NO FURTHER MEETING WAS REQUESTED OR HELD. MR. KUDLA STATED THAT HE IS REGULARLY IN THE PLANT AND HAS OCCASION TO SEE MARTIN FROM TIME TO TIME IN THE COURSE OF HIS DUTIES. HE STATED THAT THE OPERATIONS OF THE PLANT DURING THIS PERIOD HAD BECOME LESS EFFICIENT RESULTING IN THE NECESSITY OF OVERTIME WORK, ALL OF WHICH HE BELIEVED RESULTED FROM THE EMPLOYEES CONFUSION CONCERNING UNION REPRESENTATION. HE SAID FURTHER THAT ON FEBRUARY 8TH, 1968 THE APPLICANT RECEIVED A LETTER DATED FEBRUARY 5TH, 1968 FROM THE RESPONDENT REQUESTING A MEETING TO DISCUSS A COLLECTIVE AGREEMENT. THE ENVELOPE WAS POST-MARKED FEBRUARY 5TH, 1968.

4. MR. GEORGE SPECHT, A REPRESENTATIVE OF THE RESPONDENT, TESTIFIED THAT HE HAD ATTENDED THE MEETING HELD ON DECEMBER 8TH BUT THE UNION WAS NOT READY AT THAT TIME TO SUBMIT PROPOSALS TO THE APPLICANT FOR A COLLECTIVE AGREEMENT. PRIOR TO THE ABOVE NOTED MEETING A BARGAINING COMMITTEE HAD BEEN ELECTED AND SINCE THAT MEETING THERE WERE MEMBERSHIP MEETINGS HELD ON DECEMBER 11TH AND JANUARY 17TH AT WHICH THE MEMBERS DISCUSSED THE PROPOSALS TO BE SUBMITTED TO THE APPLICANT. HE EXPLAINED THAT THE REASON FOR THE DELAY INCONTACTING THE APPLICANT TO ARRANGE A FURTHER MEETING WAS THE FACT THAT NEGOTIATIONS (FOR A MASTER AGREEMENT) WERE TAKING PLACE WITH GENERAL MOTORS DURING THE PERIOD IN QUESTION IN OTHER PLACES, THE TERMS OF WHICH WOULD HAVE AN EFFECT ON THE BARGAINING FOR THIS UNIT. WHILE THE OTHER NEGOTIATIONS WERE FOR UNITS DIFFERENT THAN THE ONE INVOLVED HERE AND THIS UNIT WAS NOT INCLUDED IN THE MASTER AGREEMENT, MR. SPECHT SAID THAT THE PRINCIPLES ESTABLISHED FOR THE OTHER PLANTS WOULD NECESSARILY BE CONSIDERED IN THE BARGAINING FOR THIS UNIT AND THAT NOTHING COULD BE SETTLED UNTIL THE TERMS OF THE MASTER AGREEMENT HAD BEEN SET. HE SAID THAT HE EXPLAINED THESE FACTS TO THE EMPLOYEES.

5. IT IS ALSO TO BE NOTED THAT THERE WERE FILED IN THIS MATTER THREE LETTERS FROM EMPLOYEES IN THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT. IT WOULD APPEAR FROM THE CONTENTS OF THE LETTERS THAT 11 EMPLOYEES SUPPORTED THE POSITION OF THE RESPONDENT AND 2 SUPPORTED THE APPLICANT IN SO FAR AS REQUESTING THE BOARD TO ORDER A VOTE. AT THE TIME A CERTIFICATE WAS GRANTED TO THE RESPONDENT THERE WERE 24 EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT.

6. SECTION 45(2) READS AS FOLLOWS:

WHERE A TRADE UNION THAT HAS GIVEN NOTICE UNDER SECTION 11 OR SECTION 40 OR THAT HAS RECEIVED NOTICE UNDER SECTION 40 FAILS TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS FROM

THE GIVING OF THE NOTICE, OR AFTER HAVING COMMENCED TO BARGAIN BUT BEFORE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR MEDIATOR, ALLOWS A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

THE PURPOSE OF THIS SECTION HAS BEEN DEALT WITH BY THE BOARD IN THE DOMINION STORES CASE, 1956, CLLC ¶18,048 WHERE THE BOARD STATED IN PART AS FOLLOWS:

THE PURPOSE OF SECTION 43 [NOW 45] OF THE ACT IS TO PROTECT THE EMPLOYEES AND, IN A PROPER CASE, THE EMPLOYER AGAINST A UNION WHICH STAKES OUT A CLAIM TO REPRESENT CERTAIN EMPLOYEES AND THEN TAKES NO STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THOSE EMPLOYEES. HOWEVER, THE SECTION IS TO BE USED AS A SHIELD, NOT AS A SWORD. SECTION 43 SHOULD NOT BE USED TO PENALIZE A UNION WHICH HAS FAILED TO GIVE NOTICE UNDER SECTION 10 OF THE ACT, BUT RATHER TO AFFORD AN OPPORTUNITY FOR AN INTERESTED PARTY TO BRING THAT FACT TO THE ATTENTION OF THE BOARD SO THAT THE BOARD MAY CALL UPON THE UNION TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS AS THE CASE MAY BE.

IT IS CLEAR THAT THIS SECTION OF THE ACT WAS NOT INTENDED BY THE LEGISLATURE TO BE A PENAL PROVISION BUT AS A PROTECTION FOR EMPLOYEES TO ENSURE THAT A UNION WHICH HAS ACQUIRED BARGAINING RIGHTS FOR THEM ADEQUATELY PURSUES THEIR INTERESTS WITH THEIR EMPLOYER. IF THE UNION FAILS IN THIS RESPECT THEN THE REMEDIES SET OUT IN THE ACT MAY BE REQUESTED BY EMPLOYEES OR BY AN EMPLOYER. SEE THE DECISION OF THE BOARD IN WALMER TRANSPORT COMPANY CASE, 1953, CCH, CANADIAN LAW REPORTER 1949-54, TRANSFER BINDER ¶17,062. IT SHOULD BE NOTED THAT A DECLARATION PURSUANT TO THIS SECTION IS IN THE DISCRETION OF THE BOARD AND IF THE BOARD FOUND THAT THE RESPONDENT HAD ALLOWED 60 DAYS TO ELAPSE WITHOUT SEEKING TO BARGAIN, THIS WOULD NOT PER SE ENTITLE THE APPLICANT TO THE RELIEF IT HAS REQUESTED.

7. AS A PREREQUISITE FOR THE RELIEF REQUESTED THE APPLICANT MUST SATISFY THE BOARD THAT THE RESPONDENT DID ALLOW A PERIOD OF 60 DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN. THE FACTS HERE IN

THIS RESPECT ARE CLEAR. FOLLOWING THE GRANTING OF A CERTIFICATE TO THE RESPONDENT BY THE BOARD, A NOTICE TO BARGAIN WAS GIVEN ON NOVEMBER 28TH, 1967 BY THE RESPONDENT TO THE APPLICANT AND A MEETING WAS HELD BY THE PARTIES ON DECEMBER 8TH, 1967. A LETTER WAS WRITTEN AND MAILED TO THE APPLICANT BY THE RESPONDENT WHICH THE APPLICANT RECEIVED ON FEBRUARY 8TH, 1968. THIS APPLICATION WAS MADE ON FEBRUARY 7TH WHICH IS THE 61ST DAY FOLLOWING THE MEETING HELD IN DECEMBER. UNQUESTIONABLY, THE RESPONDENT IN THIS SITUATION WOULD HAVE BEEN BETTER ADVISED TO HAVE POSTED THE LETTER BY REGISTERED MAIL OR TO HAVE SENT A TELEGRAM WHICH IN EITHER CASE THIS APPLICATION WOULD PROBABLY NOT HAVE BEEN MADE. IT IS WELL ESTABLISHED HOWEVER THAT THIS SECTION OF THE ACT IS NOT INTENDED TO BE USED TO EXACT A PENALTY AGAINST A UNION AND ALL THE CIRCUMSTANCES COVERING THE ENTIRE PERIOD INVOLVED MUST BE CONSIDERED. IN THE INSTANT MATTER THEREFORE, HAVING REGARD TO THE DATE OF THE APPLICATION, THE DATE OF THE RESPONDENT'S LETTER AND THE TIME OF MAILING SAME AND THE PURPOSE AND INTENT OF SECTION 45(2) OF THE ACT, IT IS OUR OPINION THAT THE ACTIONS OF THE RESPONDENT IN PREPARING AND MAILING A LETTER REQUESTING A FURTHER MEETING WITH THE APPLICANT FOR COLLECTIVE BARGAINING PURPOSES WITHIN 60 DAYS FROM THE LAST MEETING OF THE PARTIES DESPITE THE FACT THAT IT WAS NOT RECEIVED BY THE APPLICANT UNTIL THE 62ND DAY SATISFIES THE REQUIREMENTS OF THE ACT. WE, THEREFORE, FIND THAT THE RESPONDENT DID NOT ALLOW A PERIOD OF 60 DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN WITH THE APPLICANT.

8. IN VIEW OF OUR FINDING IN THIS MATTER, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE QUESTION OF WHETHER IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD WOULD EXERCISE ITS DISCRETION PURSUANT TO THE PROVISIONS OF SECTION 45(2) OF THE ACT.

9. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER J.E.C. ROBINSON:

MARCH 26, 1968.

WHILE MY COLLEAGUES IN THE OBITER DICTA OF THEIR DECISION DISCUSS THE DISCRETIONARY POWERS OF THE BOARD IN ADJUDICATING UPON CASES WITHIN THE LIMITS OF SECTION 45 OF THE LABOUR RELATIONS ACT, THEY HAVE CONFINED THEIR DECISION TO THE FINDING THAT THE UNION HAD SATISFIED THE REQUIREMENTS OF SECTION 45(2) BY FORWARDING BY ORDINARY MAIL WITHIN 60 DAYS FROM THE LAST MEETING OF THE PARTIES A REQUEST FOR A FURTHER MEETING.

THAT BEING SO, IT IS MY INTENTION ALSO TO CONFINE MY DECISION TO THE LITERAL MEANING OF SECTION 45(2). IT IS SUFFICIENT FOR ME TO SAY THAT IN EXERCISING MY DISCRETION ON THE EVIDENCE PRESENTED TO ME, I WOULD HAVE FOUND THAT THE UNION HAD NOT GIVEN A SATISFACTORY EXPLANATION FOR ITS DELAY IN CONTINUING NEGOTIATIONS AND I WOULD HAVE DIRECTED A VOTE OF THE EMPLOYEES IN THE BARGAINING UNIT TO ASCERTAIN WHETHER THEY WISHED TO HAVE THE UNION CONTINUE TO ACT AS THEIR BARGAINING AGENT.

SECTION 45(2) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

WHERE A TRADE UNION THAT HAS GIVEN NOTICE UNDER SECTION 11 OR SECTION 40 OR THAT HAS RECEIVED NOTICE UNDER SECTION 40 FAILS TO COMMENCE TO BARGAIN WITHIN SIXTY DAYS FROM THE GIVING OF THE NOTICE OR, AFTER HAVING COMMENCED TO BARGAIN BUT BEFORE THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR MEDIATOR, ALLOWS A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

THE WORDS FROM THE SECTION UPON WHICH MY COLLEAGUES HAVE INTERPRETED IN THEIR DECISION ARE "...ALLOWS A PERIOD OF SIXTY DAYS TO ELAPSE DURING WHICH IT HAS NOT SOUGHT TO BARGAIN."

THE FACTS AS THEY PERTAIN TO THE INTERPRETATION OF THIS SECTION ARE RELATIVELY SIMPLE. ON DECEMBER 8TH, 1967 THE COMPANY AND THE UNION MET FOR THE PURPOSE OF DISCUSSING A COLLECTIVE AGREEMENT. THE UNION INDICATED THAT IT WAS NOT READY AT THAT TIME TO SUBMIT PROPOSALS TO THE APPLICANT FOR A COLLECTIVE AGREEMENT. IT INDICATED THAT SUCH SUBMISSIONS COULD NOT BE MADE, NOR ANYTHING SETTLED UNTIL THE UNION HAD SETTLED THE TERMS OF A MASTER AGREEMENT COVERING A GROUP OF EMPLOYEES IN PLANTS OTHER THAN THIS RESPONDENT. AT THE DATE OF THIS HEARING, THE MASTER AGREEMENT COVERING THE OTHER PLANTS HAD NOT BEEN SETTLED. IT WOULD SEEM, THEREFORE, THAT AT THE TIME OF THE HEARING, THE UNION TOOK THE POSITION THAT IT WAS UNABLE TO BARGAIN WITH THIS RESPONDENT.

ON FEBRUARY 5TH, 1968, THE UNION SENT A LETTER TO "MR. CORFE, GENERAL MOTORS PRODUCTS, OXFORD STREET EAST, LONDON, ONTARIO" WHICH READS AS FOLLOWS:

DEAR SIR:

PLEASE BE ADVISED THAT THE UNION IS REQUESTING A MEETING TO DISCUSS THE MAKING OF A COLLECTIVE AGREEMENT.

WOULD YOU PLEASE ADVISE US OF A DATE CONVENIENT TO YOU ON WHICH SUCH A MEETING CAN BE HELD.

IN VIEW OF THE EARLIER POSITION OF THE UNION AT THE ORIGINAL MEETING BETWEEN THE PARTIES, BUT WITHOUT MAKING A FINDING, I HAVE GRAVE DOUBTS THAT THE LETTER FORWARDED ON FEBRUARY 5TH, 1968 SATISFIES THE WORDS "SOUGHT TO BARGAIN" WHICH ARE PRESENT IN SECTION 45(2).

IN ANY EVENT, I WOULD FIND THAT THE UNION HAD NOT SOUGHT TO BARGAIN WITHIN 60 DAYS BECAUSE ITS LETTER WAS NOT RECEIVED BY THE COMPANY UNTIL AFTER THE 60 DAY PERIOD. IT IS MY OPINION THAT IF THE LETTER MEETS THE REQUIREMENTS OF THE ACT AND IS A SEEKING TO BARGAIN, IT MUST BE COMMUNICATED TO THE COMPANY WITHIN THE 60 DAYS. IT WOULD SEEM THAT THIS PRACTICE OF THE BOARD IS PRESENT IN OTHER PROCEEDINGS UNDER THE ACT. FOR EXAMPLE, IN PETITION CASES, IF THE PETITION IS SENT BY REGISTERED MAIL, IT IS DEEMED TO HAVE BEEN RECEIVED BY THE BOARD ON THE DATE OF ITS REGISTRATION. IF, ON THE OTHER HAND, THE LETTER IS SENT BY ORDINARY MAIL, IT IS DEEMED TO HAVE BEEN RECEIVED WHEN IT IS ACTUALLY RECEIVED BY THE BOARD, AND NO RELIEF IS GIVEN BY THIS BOARD TO PETITIONERS IF THE TERMINAL DATE HAS INTERVENED BEFORE RECEIPT OF THE PETITION BY THE BOARD.

IN THE INSTANT CASE, THE LETTER WAS FORWARDED BY ORDINARY MAIL, AND IF THE BOARD'S PRACTICE IS TO BE CONSISTENT, IT WOULD SEEM THAT THE APPLICABLE DATE TO BE CONSIDERED IS FEBRUARY 7TH, I.E. THE DATE IT WAS RECEIVED BY THE COMPANY, A DATE AFTER THE 60 DAY PERIOD CONTEMPLATED BY SECTION 45(2) OF THE ACT.

FOR THE ABOVE CONSIDERATIONS, THEREFORE, I WOULD HAVE DIRECTED A VOTE AMONG THE EMPLOYEES IN THE BARGAINING UNIT TO ASCERTAIN WHETHER THEY WISHED THIS UNION TO REMAIN AS THEIR BARGAINING AGENT.

INDEXED ENDORSEMENT - LOCK-OUT UNLAWFUL

14223-67-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 1687 (APPLICANT) V. BEAMER AND LATHROP LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. KOSKIE AND L. POPOVITCH FOR THE APPLICANT, AND S. S. MACINNES, Q.C., GORDON A. READ, AND GEORGE W. PATTERSON FOR THE RESPONDENT.

DECISION OF RORY F. EGAN VICE-CHAIRMAN AND BOARD MEMBER E. BOYER:

MARCH 8, 1968.

2. THIS IS AN APPLICATION FOR A DECLARATION THAT A LOCK-OUT CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.

3. THE EVIDENCE IS AS FOLLOWS:

THE RESPONDENT WAS BOUND BY A COLLECTIVE AGREEMENT WITH THE APPLICANT, WHICH AGREEMENT EXPIRED ON DECEMBER 31ST, 1967;

A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER OF LABOUR ON JANUARY 29TH, 1968. ON FEBRUARY 26TH, 1968, THE MINISTER ADVISED THE PARTIES THAT HE HAD DECIDED NOT TO APPOINT A BOARD OF CONCILIATION WITH RESPECT TO THE DISPUTE BETWEEN THEM;

ON FEBRUARY 19TH, 1968, 100 EMPLOYEES OF THE RESPONDENT WHO WERE MEMBERS OF THE APPLICANT WERE LAID OFF BY THE RESPONDENT AT THE STRATHCONA MINE CONCENTRATOR PROJECT AT ONAPING, ONTARIO. SUBSEQUENTLY, NAMELY ON FEBRUARY 23RD, 17 MEMBERS OF THE APPLICANT WHO WERE ALSO EMPLOYEES OF THE RESPONDENT WERE LAID OFF. NONE OF THE EMPLOYEES REFERRED TO ABOVE HAVE SINCE BEEN EMPLOYED BY THE RESPONDENT.

4. THE TERMINATION OF EMPLOYMENT OF ALL EMPLOYEES OCCURRED PRIOR TO THE EXPIRY OF THE TIME LIMITS SET OUT IN SECTION 54 OF THE LABOUR RELATIONS ACT AND THEREFORE, IF FOUND TO BE A LOCK-OUT, WOULD BE AN UNLAWFUL LOCK-OUT.

5. THE APPLICANT CALLED WESLEY RILEY TO TESTIFY. MR. RILEY IS ELECTRICAL SUPERVISOR FOR THE RESPONDENT AND OCCUPIED THAT POSITION AT THE TIMES OF THE LAY-OFFS REFERRED TO ABOVE. HE TESTIFIED THAT THE ELECTRICAL WORK WHICH THE EMPLOYEES OF THE RESPONDENT HAD BEEN ENGAGED IN AT THE TIME OF THE LAY-OFFS WAS NOW BEING DONE BY APPROXIMATELY TWENTY-TWO EMPLOYEES OF FALCONBRIDGE WITH WHOM, HE SAID, THE RESPONDENT HAD A CONTRACT FOR THE ELECTRICAL WORK ON THE PROJECT. HE STATED THAT SINCE THE LAY-OFFS HE HAD BEEN EMPLOYED BY THE RESPONDENT AS A CONSULTANT AND LIAISON-MAN TO WORK WITH THE FALCONBRIDGE SUPERVISION ON THE JOB. HE STATED THAT THE WORK BEING DONE BY THE FALCONBRIDGE EMPLOYEES WAS THE SAME WORK AS WAS BEING DONE BY THE RESPONDENT'S EMPLOYEES AT THE TIME THEY WERE LAID OFF.

6. THE RESPONDENT ELECTED NOT TO CALL EVIDENCE AND MOVED FOR A DISMISSAL OF THE APPLICATION ON THE GROUNDS THAT THE APPLICANT HAD FAILED TO ESTABLISH A CASE. IT WAS THE RESPONDENT'S POSITION THAT THE EVIDENCE CALLED BY THE APPLICANT PROVED THE EXISTENCE OF A CONTRACT BETWEEN THE RESPONDENT AND FALCONBRIDGE AND ALSO PROVED THAT THIS CONTRACT HAD BEEN CANCELLED. IT SUBMITTED THAT THE CANCELLATION OF THE CONTRACT MADE THE LAY-OFF OF THE EMPLOYEES NECESSARY AND PROPER. IN OUR OPINION THE CRUX OF THIS MATTER LIES IN THE ANSWER TO THE QUESTION CONCERNING THE EXISTENCE OF A CONTRACT BETWEEN THE RESPONDENT AND FALCONBRIDGE AND, MORE PRECISELY, WITH THE QUESTION OF ITS CANCELLATION.

7. LEAVING ASIDE FOR THE MOMENT THE MATTER OF THE CONTRACT, THE UNION EVIDENCE DEMONSTRATES THAT AT THE TIME OF THE CESSATION OF WORK WITH WHICH WE ARE CONCERNED THE APPLICANT AND THE COMPANY WERE IN THE MIDST OF A DISPUTE ARISING OUT OF NEGOTIATIONS FOR A COLLECTIVE AGREEMENT. THE WORK WHICH THE APPLICANT'S MEMBERS HAD BEEN DOING WAS STILL AVAILABLE AND WAS, IN FACT, BEING CARRIED ON BY EMPLOYEES OF FALCONBRIDGE WITH THE ADVICE AND ASSISTANCE OF THE FOREMAN OF THE RESPONDENT. IN VIEW OF THESE CIRCUMSTANCES AND CONSIDERING THE FURTHER FACT THAT THE NEGOTIATIONS HAD REACHED AN IMPASSE, WE ARE OF THE OPINION THAT ON THE BASIS OF THESE FACTS, LEAVING ASIDE (AS WE SAID) THE QUESTION OF THE CONTRACT, THE UNION HAS MADE OUT A 'PRIMA FACIE' CASE OF UNLAWFUL LOCK-OUT WITHIN THE MEANING OF SECTION 1(1)(g) OF THE LABOUR RELATIONS ACT.

8. THE EVIDENCE WITH RESPECT TO THE CONTRACT WAS ELICITED FROM THE UNION'S WITNESS ON CROSS-EXAMINATION. HE WAS ASKED IF HE WAS ASSISTANT SUPERVISOR FOR BEAMER AND LATHROP LIMITED "WHO HAD THE CONTRACT FOR ELECTRICAL WORK AT FALCONBRIDGE". HE REPLIED THAT HE WAS. WHEN ASKED IF HE KNEW ABOUT CANCELLATION OF THE CONTRACT, HE REPLIED THAT HE HAD BEEN INFORMED THAT THE CONTRACT HAD BEEN CANCELLED. HE DID NOT GIVE EVIDENCE AS TO THE TIME WHEN THE CONTRACT WAS SAID TO HAVE BEEN CANCELLED NOR DID HE IDENTIFY THE PERSON WHO, ACCORDING TO HIS TESTIMONY, HAD INFORMED HIM OF THE CANCELLATION.

9. THE EVIDENCE OF THE EXISTENCE OF A CONTRACT BETWEEN THE RESPONDENT AND FALCONBRIDGE IS TENUOUS AT BEST. HOWEVER, EVEN IF WE ASSUME THE EXISTENCE OF A CONTRACT, THE TERMS OF WHICH ARE LEFT ENTIRELY TO CONJECTURE, WE CANNOT FIND, ON THE BASIS OF THE HEARSAY EVIDENCE OF THE SOLE WITNESS CALLED, THAT THE RESPONDENT HAS SATISFACTORILY ESTABLISHED THE CANCELLATION OF THE CONTRACT, AND EVEN IF WE ASSUMED THAT FACT TO BE SO, THERE IS LEFT THE IMPORTANT QUESTION AS TO WHEN THE ALLEGED CANCELLATION TOOK PLACE.

10. IN THE RESULT, THEN, WE FIND THAT THE APPLICANT HAS MADE OUT A 'PRIMA FACIE' CASE OF UNLAWFUL LOCK-OUT WHICH THE RESPONDENT HAS FAILED TO SATISFACTORILY ANSWER. THE BOARD THEREFORE FINDS THAT THE ACTION OF THE RESPONDENT IN TERMINATING THE EMPLOYMENT OF CERTAIN MEMBERS OF THE APPLICANT ON FEBRUARY 19TH, 1967, AND IN TERMINATING THE EMPLOYMENT OF CERTAIN OTHER MEMBERS OF THE APPLICANT ON FEBRUARY 23RD, 1968, AMOUNTS IN EACH INSTANCE TO A LOCK-OUT WITHIN THE MEANING OF SECTION 1(1)(g) OF THE LABOUR RELATIONS ACT, AND THAT EACH SUCH LOCK-OUT IS UNLAWFUL HAVING REGARD TO THE PROVISIONS OF SECTION 54(2) OF THE LABOUR RELATIONS ACT.

DECISION OF BOARD MEMBER R. W. TEAGLE:

MARCH 8, 1968.

1. I DISSENT.

2. I DO NOT DISAGREE WITH THE EVIDENCE AS SET OUT IN THE MAJORITY DECISION.

3. A LOCK-OUT OF EMPLOYEES AS DEFINED IN SECTION 1(1)(G) OF THE LABOUR RELATIONS ACT IS AS FOLLOWS:

(G)"'LOCK-OUT' INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYER'S ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES;"

4. THE APPLICANT, IN MY OPINION, HAS NOT ESTABLISHED THAT THE LAY-OFF WAS ...

"WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYERS' ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES;"

5. UNLESS THE EVIDENCE DISCLOSES THAT THE LAY-OFF WAS FOR THE ABOVE PURPOSE IT IS NOT A LOCK-OUT, LAWFUL OR UNLAWFUL, UNDER THE ACT. THE ONLY WITNESS CALLED WAS BY THE APPLICANT, AND HIS EVIDENCE DOES NOT INDICATE REASONS FOR LAY-OFF EXCEPT THAT HE KNEW OF THE CANCELLATION OF THE RESPONDENT'S CONTRACT.

6. AS THE APPLICANT HAS FAILED TO ESTABLISH THAT THE LAY-OFF WAS A LOCK-OUT, LAWFUL OR UNLAWFUL, EXCEPT BY A LONG-DRAWN INFERENCE WHICH, IN MY OPINION, IS NOT SUPPORTED BY THE EVIDENCE OF THE APPLICANT, I WOULD DISMISS THE APPLICATION.

INDEXED ENDORSEMENT - PROSECUTION

14289-67-U: THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. PROGRESS PLASTERING LIMITED, AND JOSEPH SCRIGNUOLI (RESPONDENTS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: RAYMOND KOSKIE, T. NEIL FOR THE APPLICANT,
R. B. STATTON FOR THE RESPONDENT.

DECISION OF THE BOARD:

MARCH 29, 1968.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF PROGRESS PLASTERING LIMITED FOR REFUSING TO CONTINUE TO EMPLOY SABATINO BIFOLCHI, AND PIETRO LINARELLO BECAUSE THEY WERE MEMBERS OF THE APPLICANT AND OF THE RESPONDENT JOSEPH SCRIGNUOLI, ACTING ON BEHALF OF THE RESPONDENT COMPANY, FOR DISCRIMINATING AGAINST SABATINO BIFOLCHI AND PIETRO LINARELLO BECAUSE THEY WERE MEMBERS OF THE APPLICANT CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT.
2. HAVING REGARD TO ALL THE EVIDENCE BEFORE THE BOARD AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD CONSENTS TO AN INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:
 - (A) THAT THE RESPONDENT, PROGRESS PLASTERING LIMITED REFUSED TO CONTINUE TO EMPLOY SABATINO BIFOLCHI AND PIETRO LINARELLO BECAUSE THEY WERE MEMBERS OF THE APPLICANT IN CONTRAVENTION OF SECTION 50(A) OF THE ACT,
 - (B) THAT THE SAID RESPONDENT, JOSEPH SCRIGNUOLI, DISCRIMINATED AGAINST SABATINO BIFOLCHI AND PIETRO LINARELLO BECAUSE THEY WERE MEMBERS OF THE APPLICANT IN CONTRAVENTION OF SECTION 50(A) OF THE ACT.
3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

INDEXED ENDORSEMENTS - SECTION 65

13812-67-U: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (COMPLAINANT) V. R. E. LAW CRUSHED STONE LTD. (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS J. E. C. ROBINSON AND U. HODGES.

APPEARANCES AT HEARING: DON NICHOLSON, FRANK HAYDU FOR THE APPLICANT, E. L. STRINGER, F. LAW, G. SHERK FOR THE RESPONDENT.

DECISION OF THE BOARD:

MARCH 19, 1968.

1. THIS IS AN APPLICATION FOR RELIEF MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, WILLIAM ROBINSON, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 48 AND 50(A)(C) OF THE LABOUR RELATIONS ACT AND REQUESTS THAT HE BE REINSTATED AND COMPENSATED FOR LOSS OF WAGES.

2. A SUMMARY OF THE RELEVANT EVIDENCE IN THIS MATTER IS THAT WILLIAM ROBINSON PRIOR TO HIS LAY OFF ON OCTOBER 19TH, 1967 HAD BEEN STEADILY EMPLOYED BY THE RESPONDENT FOR APPROXIMATELY THREE YEARS, WITH THE EXCEPTION OF CERTAIN HOLIDAYS AND PERIODS OF SICKNESS. UP UNTIL HE HAD A SERIOUS OPERATION IN 1967 HE HAD BEEN FRONT-END LOADER OPERATOR BUT ON RETURNING TO WORK THEREAFTER, ON HIS DOCTOR'S ADVICE, HE REQUESTED LIGHTER DUTIES. AS A RESULT HE WAS ASSIGNED TO DRIVE A TRUCK WHICH HE DID UNTIL HE WAS LAID OFF. MR. ROBINSON WAS AN ACTIVE MEMBER OF THE UNION AND HAD OBTAINED SIGNATURES ON A NUMBER OF MEMBERSHIP CARDS, HANDED OUT PAMPHLETS, TOLD EMPLOYEES ABOUT CERTAIN MEETINGS AND WAS ONE OF THE LEADERS IN THE UNION ORGANIZATION AT THE RESPONDENT'S PLANT. THE COMPLAINANT HAD MADE AN APPLICATION FOR CERTIFICATION IN EARLY AUGUST, 1967 THE DETERMINATION OF WHICH BY THE BOARD WAS PENDING ON OCTOBER 19TH. SUBSEQUENTLY A VOTE WAS ORDERED BY THE BOARD AND HELD ON DECEMBER 14TH, 1967. A SUBSTANTIAL NUMBER OF EMPLOYEES WERE LAID OFF IN AUGUST AND THREE OTHER EMPLOYEES ALONG WITH ROBINSON WERE LAID OFF ON THE SAME DAY IN OCTOBER. ROBINSON SAID THAT THE RESPONDENT'S BUSINESS WAS SEASONAL AND THAT THE WINTER MONTHS WERE USUALLY SLACK. SINCE HE HAD WORKED THERE LAY OFFS HAD OCCURRED AND HE CONCEDED THAT HE WOULD HAVE BEEN LAID OFF ON DECEMBER 15TH IN ANY EVENT AS THERE WAS THEN WHAT AMOUNTED TO A GENERAL SHUT DOWN OF THE PLANT.

3. LAY OFFS HAD BEEN SCHEDULED ACCORDING TO SENIORITY AND QUALIFICATIONS BUT DESPITE THIS PRACTICE ROBINSON ASSERTED THAT EMPLOYEES JUNIOR TO HIM WERE RETAINED BY THE RESPONDENT AFTER OCTOBER 19TH AND THE RESPONDENT WAS SUFFICIENTLY BUSY AFTER THAT DATE TO HAVE KEPT HIM WORKING. WHEN HE WAS LAID OFF THERE WERE 90 EMPLOYEES AND ON DECEMBER 15TH THERE WERE 86 EMPLOYEES. ROBINSON STATED THAT HE HAD ATTEMPTED TO OBTAIN OTHER WORK BUT WITHOUT SUCCESS AND HAD RECEIVED UNEMPLOYMENT INSURANCE BENEFITS. UNDER CROSS-EXAMINATION HE ADMITTED THAT ON NOVEMBER 6TH, 1967 HE WAS OFFERED A JOB DRIVING A TRUCK FOR A MR. D. COSBY BUT HE HAD REFUSED IT AS THE WAGES WERE TOO LOW AND BECAUSE COSBY HAD INQUIRED OF HIS UNION ACTIVITIES. ROBINSON EARNED \$2.25 PER HOUR PRIOR TO HIS LAY OFF AND WAS WORKING ON AN AVERAGE OF 50 HOURS PER WEEK.

4. MR. DOUGLAS COSBY, AN INDEPENDENT CONTRACTOR TESTIFIED THAT HE DOES TRUCKING WORK FOR THE RESPONDENT AS WELL AS OTHER CONTRACTORS IN THE AREA. HE HEARD THAT ROBINSON WAS UNEMPLOYED AND SINCE HE REQUIRED A DRIVER MADE ARRANGEMENTS WITH HIM TO START WORK ON NOVEMBER 6TH. HE SAID THAT HE OFFERED ROBINSON \$1.80 PER HOUR FOR ABOUT 50 HOURS PER WEEK. HE DENIED HAVING ANY CONVERSATIONS WITH ROBINSON CONCERNING THE UNION BUT HE ADMITTED THAT BY HERESAY HE KNEW OF ROBINSON'S UNION ACTIVITIES. ROBINSON DID NOT REPORT FOR WORK ON NOVEMBER 6TH AND AFTER TELEPHONING HIS HOUSE TO INQUIRE THE REASON FOR HIS ABSENCE COSBY REPLACED ROBINSON WITH SOMEONE ELSE FOR THE JOB. HE STATED THAT HE HAD DISCUSSED WITH MR. LAW THE POSSIBILITY OF HIRING ROBINSON AND LAW HAD NOT TRIED TO DISSUADE HIM AT ALL FROM DOING SO.

5. GERALD SHERK, GENERAL FOREMAN OF THE RESPONDENT, TESTIFIED THAT THE RESPONDENT NORMALLY LAYS OFF MANY OF ITS EMPLOYEES DURING THE WINTER MONTHS AS THIS IS A SLACK TIME FOR THE BUSINESS. IN THE WINTER OF 1966/67

ABOUT 50 EMPLOYEES WERE AFFECTED AND THIS WINTER APPROXIMATELY 80. IN JULY, 1967 THREE LARGE CONTRACTS WERE COMPLETED AND THE RESPONDENT LAID OFF ABOUT 50 EMPLOYEES AT THAT TIME. ON OCTOBER 19TH, 1967 THERE WERE FOUR EMPLOYEES, INCLUDING ROBINSON, LAID OFF DUE TO LACK OF WORK AND A GENERAL LAY OFF OCCURRED ON DECEMBER 15TH AT WHICH TIME, IF ROBINSON HAD BEEN KEPT ON AFTER OCTOBER 19TH, HE WOULD HAVE BEEN INCLUDED IN THE LAY OFF. THERE WAS NO WORK AVAILABLE FOR HIM AS OF THE DATE OF THE HEARING BUT SHERK EXPECTED THAT HE WOULD BE RECALLED IN THE SPRING WHEN WORK PICKED UP. LAY OFFS WERE CONSIDERED BY SENIORITY AND QUALIFICATIONS. AFTER ROBINSON HAD RETURNED TO WORK FROM BEING IN THE HOSPITAL HE HAD REQUESTED SHERK TO GIVE HIM LIGHTER DUTIES AND AS A RESULT SHERK ASSIGNED HIM TO DRIVING A TRUCK. HE TOLD ROBINSON THAT HIS JOB COULD NOT BE PROTECTED THROUGH THE WINTER AS IT WAS IN THE PREVIOUS YEAR WHEN HE WAS A FRONT-END LOADER OPERATOR. SHERK DENIED THAT EMPLOYEES JUNIOR TO ROBINSON WERE KEPT ON AFTER OCTOBER 19TH AND GAVE DETAILS OF THE SENIORITY STATUS AND NATURE OF WORK PERFORMED BY THOSE EMPLOYEES CLAIMED BY ROBINSON TO BE IN THIS CATEGORY. HE ASSERTED THAT ALTHOUGH HE KNEW THE UNION ACTIVITIES OF SOME EMPLOYEES SUCH AS AYRES AND HAYDU BOTH OF WHOM WERE RETAINED AFTER OCTOBER 19TH, HE WAS NOT AWARE OF ROBINSON'S ACTIVITIES ON BEHALF OF THE UNION. HE STATED THAT THE REASON FOR ROBINSON'S LAY OFF WAS LACK OF WORK IN THE JOB HE WAS DOING. THE RESPONDENT HAD CERTAIN CLEAN-UP JOBS IN THE PERIOD OCTOBER - DECEMBER BUT AS MOST OF THE TRUCKING WAS DONE BY OUTSIDE CONTRACTORS ON THE FEW JOBS REMAINING, THE RESPONDENT DID NOT NEED ROBINSON AS A TRUCK DRIVER. ROBINSON DID NOT ASK FOR ANY OTHER JOB AT THAT TIME AND THE RESPONDENT HAD NO OCCASION TO ASK HIM TO DO ANY OTHER JOB. THE RESPONDENT DID NOT AS A RULE GIVE EMPLOYEES NOTICE OF LAY OFFS.

6. THE COMPLAINANT HAS A PRIMARY OBLIGATION TO SATISFY THE BOARD BY SUBSTANTIAL CREDIBLE EVIDENCE THAT THE AGGRIEVED PERSON WAS DISCRIMINATED AGAINST BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT. THIS IS A HEAVY ONUS WHICH MUST BE ADEQUATELY DISCHARGED IN ORDER TO SUFFICIENTLY ESTABLISH A CASE WHICH THE RESPONDENT MUST THEN PROPERLY MEET. IN ASSESSING THE EVIDENCE PRESENTED TO IT THE BOARD TAKES INTO ACCOUNT MANY FACTORS SUCH AS WERE SETOUT IN THE NATIONAL AUTOMATIC VENDING COMPANY CASE C.L.L.R. TRANSFER BINDER 1960-64 ¶16,278, C.L.S. 76,935 AT PAGE 76,937 AS FOLLOWS:

IN WEIGHING THE EVIDENCE AS TO THESE CONFLICTING CLAIMS, THE BOARD MUST CONSIDER ALL THE CIRCUMSTANCES, INCLUDING THE CREDIBILITY OF THE WITNESSES, THE NATURE OF THE REASONS GIVEN, IF ANY, AT THE TIME FOR THE EMPLOYER'S ACTION AND THE BASIS THEREFOR, THE EMPLOYMENT HISTORY OF THE EMPLOYEE AFFECTED, THE EXISTENCE OF CONTEMPORANEOUS UNION ACTIVITY, THE PARTICIPATION BY THIS EMPLOYEE AND OTHER EMPLOYEES IN SUCH ACTIVITIES, ANY OVERT ACTS OF THE EMPLOYER WHICH MAY HAVE BEEN IN RESPONSE TO SUCH ACTIVITIES, THE TIMING AND MANNER OF THE DISCHARGE OFTEN LIE EXCLUSIVELY WITHIN THE KNOWLEDGE OR MEANS OF KNOWLEDGE OF

THE EMPLOYER. NEEDLESS TO SAY, HOWEVER, THE BOARD MUST ALSO BE CIRCUMSPECT TO PREVENT AN INNOCENT EMPLOYER FROM BEING VICTIMIZED BY UNFOUNDED OR IMAGINARY CLAIMS OF DISCRIMINATION LAUNCHED MERELY BECAUSE AN EMPLOYEE'S DISCHARGE IS COINCIDENTAL WITH A UNION'S ORGANIZATIONAL CAMPAIGN. IN THIS RESPECT THERE MUST, OF COURSE, BE EVIDENCE OF A SUBSTANTIAL NATURE FROM WHICH THE BOARD CAN BE SATISFIED BY REASONABLE INFERENCES OR DIRECT EVIDENCE THAT THE EMPLOYEE HAS BEEN DISCHARGED CONTRARY TO THE ACT.

7. THE CRITICAL QUESTION HOWEVER, FOR THE BOARD TO DETERMINE IS WHETHER ON ALL THE EVIDENCE THE AGGRIEVED PERSON WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE ACT. IT IS SIGNIFICANT TO NOTE THAT THE APPLICATION FOR CERTIFICATION WAS MADE BY THE COMPLAINANT IN AUGUST, 1967, THE DETERMINATION OF WHICH WAS STILL PENDING ON OCTOBER 19TH THE DATE OF ROBINSON'S LAY OFF. A SUBSTANTIAL NUMBER OF EMPLOYEES HAD BEEN LAID OFF IN JULY OR AUGUST, FOUR (INCLUDING ROBINSON AND ANOTHER TRUCK DRIVER) ON OCTOBER 19TH AND A FURTHER SUBSTANTIAL NUMBER IN DECEMBER. THERE IS NO CONFLICT IN THE EVIDENCE THAT THE RESPONDENT CONSIDERED SENIORITY AND QUALIFICATIONS IN DETERMINING THOSE EMPLOYEES TO BE LAID OFF AND IT APPEARS FROM THE EVIDENCE THAT AFTER OCTOBER 19TH ONLY EMPLOYEES WITH EQUAL OR MORE SENIORITY TO ROBINSON REGARDLESS OF THE UNION AFFILIATIONS WERE RETAINED. THOSE EMPLOYEES WITH A SIMILAR SENIORITY RECORD AS ROBINSON HAD DIFFERENT JOB QUALIFICATIONS. DUE TO THE SEASONAL NATURE OF THE RESPONDENT'S BUSINESS SUCH LAY OFFS USUALLY OCCURRED EACH YEAR ALTHOUGH SHERK STATED THAT THERE WAS LESS WORK THIS WINTER THAN OTHER RECENT WINTER PERIODS. IT IS ADMITTED THAT ROBINSON WOULD HAVE BEEN LAID OFF ON DECEMBER 15TH IN ANY EVENT. THERE IS NO SUGGESTION IN THESE CIRCUMSTANCES THAT THE LAY OFFS BY THE RESPONDENT WERE FOR ANYTHING BUT PROPER BUSINESS REASONS AND THIS CIRCUMSTANCE TAKEN BY ITSELF DOES NOT SUPPORT THE COMPLAINANT'S ALLEGATION THAT ROBINSON WAS LAID OFF FOR HIS UNION ACTIVITIES. THE COMPLAINANT GOES FURTHER HOWEVER, IT INVITES THE BOARD TO INFER FROM THE EVIDENCE THAT ROBINSON'S UNION ACTIVITIES WERE GENERALLY KNOWN THROUGHOUT THE RESPONDENT'S PLANT AND IT WOULD THEREFORE BE LOGICAL TO ASSUME THAT THE RESPONDENT WAS AWARE OF THIS AND IN FACE OF THE APPLICATION FOR CERTIFICATION DISCRIMINATED AGAINST ROBINSON. WE DO NOT FEEL THAT THIS ASSUMPTION IS AVAILABLE TO THE COMPLAINANT ON THE EVIDENCE BEFORE US.

8. HAVING CONSIDERED ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES IN THIS MATTER THE BOARD IS NOT SATISFIED THAT THE AGGRIEVED PERSON, WILLIAM ROBINSON, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AS ALLEGED BY THE COMPLAINANT.

9. THE APPLICATION IS ACCORDINGLY DISMISSED.

14094-67-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC
(COMPLAINANT) V. PARK HOUSE (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN
AND P. J. O'KEEFFE.

DECISION OF VICE-CHAIRMAN H. D. BROWN AND BOARD MEMBER
P. J. O'KEEFFE: MARCH 19, 1968.

1. THIS IS AN APPLICATION FOR RELIEF MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON, JAMES MCKEEGAN WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT AND REQUESTS THAT HE BE REINSTATED IN HIS FORMER EMPLOYMENT WITH COMPENSATION FOR LOSS OF EARNINGS. THE RESPONDENT DENIES THE COMPLAINT.

2. BRIEFLY THE EVIDENCE OF THE AGGRIEVED PERSON IS THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT AS A TAPMAN FOR ABOUT 11 MONTHS PRIOR TO BEING LAID OFF ON SUNDAY, JANUARY 28TH, 1968. MCKEEGAN WAS ACTIVE IN THE ORGANIZATION OF THE UNION AT THE RESPONDENT'S PREMISES AND MR. CORNFOOT, THE OWNER, WAS AWARE OF THIS AFTER HE RECEIVED THE NOTICE FROM THE BOARD. THE RESPONDENT RECEIVED NOTICE ON JANUARY 23RD, 1968 THAT THE COMPLAINANT WAS MAKING AN APPLICATION FOR CERTIFICATION. ON JANUARY 24TH, 1968 CORNFOOT OFFERED MCKEEGAN A SALARY OF \$85.00 PER WEEK (A \$10.00 PER WEEK INCREASE IN WAGES) TO WITHDRAW FROM THE UNION WHICH MCKEEGAN, ON JANUARY 26TH, REFUSED. HE STATED THAT CORNFOOT SAID TO HIM WORDS TO THE EFFECT THAT THERE WAS NO UNION COMING INTO THE HOTEL AND HE WAS GOING TO SEE HIS LAWYER. AFTER WORKING HIS REGULAR HOURS ON SATURDAY, CORNFOOT REQUESTED TO SEE HIM ON SUNDAY AT WHICH TIME HE TOLD MCKEEGAN THAT THE TILL WAS SHORT \$47.00, AND THAT HE HAD TO LAY SOMEONE OFF AND IT WAS MCKEEGAN. MCKEEGAN DENIED ANY KNOWLEDGE OF A SHORTAGE IN THE TILL AND STATED THAT THERE WAS NO SUGGESTION THAT ANYTHING WAS WRONG WITH THE TILL ON SATURDAY AFTER HIS SHIFT. AS TAPMAN HE WAS IN CHARGE OF THE TILL BUT ANOTHER EMPLOYEE AS WELL AS CORNFOOT ALSO LOOKED AFTER THE TILL FROM TIME TO TIME AND HE WAS NEVER ADVISED BY CORNFOOT THAT HE WOULD BE RESPONSIBLE FOR SHORTAGES IN THE TILL. THE TILL WAS NOT BALANCED AFTER A CHANGE OF SHIFT NOR DID MCKEEGAN CHECK THE CASH IN AT THE START OF HIS SHIFT WHEN THE CASH DRAWER WAS GIVEN TO HIM BY CORNFOOT. HE HAD NEVER BEEN WARNED OF A POSSIBLE LAY OFF OR CALLED BACK TO WORK BY THE RESPONDENT SINCE HIS LAY OFF. HE UNDERSTOOD THAT ANOTHER PERSON HAD BEEN EMPLOYED BY THE RESPONDENT SINCE HIS LAY OFF. PRIOR TO HIS LAY OFF HE EARNED \$75.00 PER WEEK FOR 40 HOURS PER WEEK. HE OBTAINED A JOB TWO AND ONE HALF WEEKS PRIOR TO THE DATE OF THE HEARING AT THE SAME RATE OF PAY. HE HAD RECEIVED \$25.00 FROM THE UNEMPLOYMENT INSURANCE COMMISSION BETWEEN THE DATE OF HIS LAY OFF AND THE DATE OF OBTAINING A NEW JOB.

3. DOUGLAS CORNFOOT, OWNER OF THE PARK HOUSE, TESTIFIED THAT HE BECAME AWARE OF THE UNION'S APPLICATION WHEN HE RECEIVED NOTICE OF SAME FROM THE BOARD. AFTER HE HAD RECEIVED IT HE ASKED MCKEEGAN IF HE HAD SIGNED A UNION CARD BUT DENIED ANY OTHER CONVERSATIONS WITH HIM CONCERNING THE UNION OR MAKING AN OFFER TO INCREASE HIS SALARY IF HE WITHDREW FROM THE UNION. MR. CORNFOOT STATED THAT HE TOOK OVER FROM MCKEEGAN ON SATURDAY NIGHT AT 8:00 P.M. AND DISCOVERED A SHORTAGE LATER THAT NIGHT OF \$43.00 BUT ADMITTED THAT HE DID NOT KNOW WHEN IT HAD OCCURRED. MCKEEGAN USUALLY WENT IN ON SUNDAYS TO GET HIS PAY ALTHOUGH

HE MAY HAVE SAID ON SATURDAY THAT HE WOULD SEE HIM (McKEEGAN) TOMORROW. HE DID NOT TELL McKEEGAN THAT HE WOULD BE LAID OFF PRIOR TO SUNDAY BUT HAD PREVIOUSLY REMARKED TO HIM THAT BUSINESS WAS QUITE SLOW. PRIOR TO JANUARY 28TH HE EMPLOYED TWO FULL TIME EMPLOYEES AND TWO PART TIME EMPLOYEES. AFTER JANUARY 28TH THE RESPONDENT EMPLOYED ONE FULL TIME EMPLOYEE, TOGETHER WITH MR. ALLIETT, WHO HAD PREVIOUSLY WORKED 20 - 24 HOURS PER WEEK AND WHO THEN WORKED 34 - 36 HOURS PER WEEK AS THE TAPMAN AND THREE OTHER PART TIME EMPLOYEES, EACH WORKING ABOUT 8 HOURS PER WEEK. CORNFOOT SAID THAT HE WOULD TAKE McKEEGAN BACK WHEN THERE WAS WORK AVAILABLE BUT HE DID NOT NEED A FULL TIME TAPMAN NOW. PRIOR TO JANUARY 28TH ALLIETT AS A WAITER WAS PAID \$1.25 PER HOUR AND AFTER AS A TAPMAN \$1.75 PER HOUR. CORNFOOT HAD HEARD THAT McKEEGAN HAD OBTAINED ANOTHER JOB AND THEREFORE HE HAD NOT ASKED HIM TO RETURN TO WORK. CORNFOOT ASSERTED THAT THE REASON FOR McKEEGAN'S LAY OFF WAS LACK OF WORK.

4. THERE IS CONSIDERABLE CONFLICT IN THE TESTIMONY PRESENTED TO THE BOARD IN THIS CASE. IN ASSESSING THE WEIGHT TO BE GIVEN TO SUCH TESTIMONY CONSIDERING THE WHOLE OF THE EVIDENCE WE HAVE PREFERRED THE EVIDENCE OF THE AGGRIEVED PERSON WHERE IT CONFLICTS WITH THAT OF CORNFOOT. IN OUR OPINION THE COMPLAINANT ESTABLISHED A PRIMA FACIE CASE WHICH REQUIRED A CREDIBLE EXPLANATION BY THE RESPONDENT FOR ITS ACTIONS. ON A CAREFUL EXAMINATION OF CORNFOOT'S EVIDENCE IN THIS REGARD WE CANNOT ACCEPT HIS EXPLANATIONS AS BEING THE REAL REASON FOR LAYING OFF McKEEGAN. AS IS USUAL IN THIS TYPE OF CASE THE ACTUAL REASON FOR AN EMPLOYEE'S DISCHARGE IS SOLELY WITHIN THE KNOWLEDGE OF THE EMPLOYER. THEREFORE IT IS NECESSARY AND PROPER TO TAKE REASONABLE INFERENCES FROM ACCEPTABLE EVIDENCE IN ORDER TO WEIGH THE AGGRIEVED PERSON'S CLAIM. HERE WE HAVE THE ASSERTION BY McKEEGAN THAT AFTER RECEIVING A NOTICE OF APPLICATION FOR CERTIFICATION CORNFOOT MADE AN OFFER TO HIM TO INCREASE HIS WAGES IF HE WOULD WITHDRAW FROM THE UNION. CORNFOOT ADMITTED THAT HE HAD ASKED McKEEGAN IF HE HAD SIGNED A UNION CARD BUT DENIED MAKING SUCH AN OFFER TO HIM. McKEEGAN WORKED HIS REGULAR HOURS IN THE WEEK ENDING SATURDAY, JANUARY 27TH AND ON SUNDAY WAS LAID OFF. CORNFOOT WAS ADAMANT THAT THE REASON FOR THIS WAS ONLY THE LACK OF WORK. THE EVIDENCE IS THAT ANOTHER EMPLOYEE TOOK OVER McKEEGAN'S DUTIES AS TAPMAN AND THE RESPONDENT HIRED AN ADDITIONAL PART TIME EMPLOYEE ABOUT THREE WEEKS PRIOR TO THE HEARING. WHILE THERE MAY BE SOME JUSTIFICATION FOR THIS ACTION BY SLIGHTLY REDUCING WAGE COSTS IT DOES NOT SUPPORT THE CONTENTION THAT WORK WAS SO SLACK THAT A REGULAR KEY EMPLOYEE HAD TO BE LAID OFF. IT IS ALSO TO BE NOTED THAT McKEEGAN WAS NOT GIVEN THE OPPORTUNITY TO RETURN TO WORK WHEN A NEW PART TIME MAN WAS HIRED. THESE INCONSISTENCIES IN THE RESPONDENT'S EVIDENCE DETRACT FROM THE EXPLANATION OFFERED IN REPLY TO THE CLAIM. WE THEREFORE CONCLUDE THAT IT WAS BECAUSE OF McKEEGAN'S DECLARED SUPPORT OF AND INVOLVEMENT WITH THE UNION THAT PRECIPITATED THE RESPONDENT'S ACTION.

5. A COMPLAINANT IN AN APPLICATION SUCH AS THIS MUST OF NECESSITY RELY ON CIRCUMSTANTIAL EVIDENCE IN ORDER TO ESTABLISH ITS CASE. IN ALL THE CIRCUMSTANCES IN THE INSTANT CASE ON THE BALANCE OF PROBABILITIES,

IT IS OUR OPINION THAT THE COMPLAINANT MET THE ONUS UPON IT TO ESTABLISH ITS CASE AND WE ARE SATISFIED THAT JAMES McKEEGAN WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

6. AT THE TIME OF HIS LAY OFF McKEEGAN WAS EARNING THE SUM OF \$75.00 PER WEEK. HE HAD APPLIED FOR UNEMPLOYMENT INSURANCE BENEFITS ON THE THURSDAY FOLLOWING THE DAY OF HIS LAY OFF AND WAS OUT OF WORK UNTIL HE OBTAINED A JOB APPROXIMATELY 2 1/2 WEEKS PRIOR TO THE DATE OF THE HEARING. IN ALL HE WAS UNEMPLOYED FOR ABOUT 2 1/2 WEEKS AND IN THAT TIME HE RECEIVED UNEMPLOYMENT INSURANCE BENEFITS IN THE AMOUNT OF \$25.00.

7. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

(A) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY JAMES McKEEGAN TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD AND RECEIVED PRIOR TO AND UP TO JANUARY 28TH, 1968.

(B) AS COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS UP TO THE DATE OF THE HEARING THE RESPONDENT SHALL FORTHWITH PAY JAMES McKEEGAN THE SUM OF \$125.00.

(C) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY JAMES McKEEGAN BETWEEN MARCH 1ST, 1968 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 10 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE ON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A HEARING FOR THAT PURPOSE.

DECISION OF BOARD MEMBER H. F. IRWIN:

MARCH 19, 1968.

I DISSENT.

I AM NOT SATISFIED AS TO THE CREDIBILITY OR THE SUFFICIENCY OF THE EVIDENCE ADDUCED AT THE HEARING BY EITHER THE COMPLAINANT OR THE RESPONDENT IN SUPPORT OF THEIR RESPECTIVE CONTENTIONS. IN ADDITION, THE COMPLAINANT DID NOT DISCHARGE THE HEAVY ONUS UPON IT TO SATISFY THE BOARD THAT THE AGGRIEVED PERSON, JAMES McKEEGAN, WAS DISMISSED FROM HIS EMPLOYMENT BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

THE EVIDENCE DISCLOSED THAT MCKEEGAN ON OR ABOUT FEBRUARY 15TH, OBTAINED PERMANENT EMPLOYMENT AS A TAPMAN AT ANOTHER HOTEL AT THE SAME SALARY HE HAD RECEIVED FROM THE RESPONDENT. IN THE CIRCUMSTANCES, I SERIOUSLY DOUBT THAT HE WOULD RETURN TO WORK FOR THE RESPONDENT EVEN IF HIS REINSTATEMENT WAS ORDERED BY THIS BOARD. IN THE CIRCUMSTANCES, I CAN ONLY CONCLUDE THAT THE COMPLAINANT UNION PROBABLY HAS SOME ULTERIOR MOTIVE AND SELF-INTEREST TO SERVE IN MAKING THIS APPLICATION.

FOR THESE REASONS, I WOULD DISMISS THE COMPLAINT.

14129-67-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL 2486 (COMPLAINANT) v. NORMAC EQUIPMENT CONSTRUCTION LIMITED
(RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS F. W. MURRAY
AND P. J. O'KEEFE.

APPEARANCES AT HEARING: P. E. GUERTIN FOR THE APPLICANT, IAN M. GORDON,
ALPHIE NORKUM FOR THE RESPONDENT.

DECISION OF THE BOARD: MARCH 21, 1968.

1. THIS IS AN APPLICATION FOR RELIEF MADE PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS, MARCEL FORGET AND GEORGE CHARTRAND, WERE DEALT WITH BY THE RESPONDENT CONTRARY TO SECTIONS 50 AND 59 OF THE ACT AND REQUESTS THAT THEY BE REINSTATED IN THEIR EMPLOYMENT WITHOUT LOSS OF PAY. THE RESPONDENT DENIES THAT THE AGGRIEVED PERSONS WERE DISCHARGED CONTRARY TO THE PROVISIONS OF THE ACT AND ASSERTS THAT THEIR EMPLOYMENT WAS TERMINATED DUE TO LACK OF WORK FOR THEM.

2. BRIEFLY THE COMPLAINANT'S EVIDENCE WAS THAT BOTH THE AGGRIEVED PERSONS WERE EMPLOYED BY THE RESPONDENT AS CARPENTERS FOR APPROXIMATELY FIVE MONTHS PRIOR TO BEING LAID OFF AT 4:00 P.M., MONDAY, JANUARY 28TH, 1968. THERE WERE THREE EMPLOYEES OF THE RESPONDENT LAID OFF AT THAT TIME, TWO OF WHOM ARE THE AGGRIEVED PERSONS AND THE THIRD WAS LEO DUBUC WHO DID NOT TESTIFY AT THE HEARING. ALL OF THEM LAST WORKED ON A JOB AT ST. JUDES CHURCH IN SOUTH PORCUPINE AND FORGET CLAIMED THAT AT THE TIME OF THE LAY OFF THERE WAS STILL WORK TO BE FINISHED THERE. AFTER BEING LAID OFF, FORGET AND DUBUC VISITED THE HOME OF MR. NORKUM, THE PRESIDENT OF THE RESPONDENT, AT 9:00 P.M. THAT DAY AND FORGET ASKED NORKUM WHY THEY WERE LAID OFF. NORKUM REPLIED THAT HE WAS AFRAID OF FORGET, AFRAID OF BEING BURNED. FORGET THEN ASKED IF HE HAD BEEN LAID OFF BECAUSE HE WAS A UNION MEMBER AND NORKUM SAID YES. FORGET TOLD HIM THAT HE WAS NOT A MEMBER OF THE UNION, HE WAS OUT OF THE UNION AND SHOWED NORKUM A LETTER FROM THE UNION STATING THAT HE WAS NOT A UNION MEMBER BECAUSE HE HAD FAILED TO PAY HIS DUES. NORKUM TOLD HIM THAT DESPITE THE LETTER FORGET HAD TO GO AND NORKUM HAD NOT THEN SAID ANYTHING ABOUT LACK OF WORK. NORKUM DID TELL HIM THAT HE WOULD BE RECALLED

SOMETIME LATER. FORGET FURTHER TESTIFIED THAT DURING THIS CONVERSATION NORKUM SAID THAT WHETHER OR NOT FORGET WAS IN THE UNION THE COMPLAINANT WOULD CALL HIM IF IT WANTED HIM. FORGET ALSO SAID THAT NORKUM HAD ASKED HIM ABOUT THE UNION IN NOVEMBER, 1967 AND HE HAD THEN REPLIED THAT HE WAS A UNION MEMBER WHERE THERE WAS A UNION BUT NOT WHERE THERE WAS NONE.

3. GEORGE CHARTRAND STATED THAT HE WAS LAID OFF WITH THE OTHER EMPLOYEES WHO HAD TOLD HIM THAT HE WAS LAID OFF FOR UNION ACTIVITIES. HE UNDERSTOOD THAT THERE WAS A LITTLE WORK LEFT TO DO AT ST. JUDES CHURCH BUT DID NOT KNOW IF THE RESPONDENT HAD ANY WORK AFTER JANUARY 28TH. HE SAID THAT HE HAD BEEN TRYING TO GET WORK BUT THERE WAS NO WORK AVAILABLE FOR CARPENTERS AT THIS TIME OF YEAR. BOTH FORGET AND CHARTRAND STATED THAT THEY WERE UNEMPLOYED AND WERE DRAWING UNEMPLOYMENT INSURANCE BENEFITS.

4. ALPHONSE NORKUM TESTIFIED THAT THE REASON FOR THE LAY OFF OF THE AGGRIEVED PERSONS WAS SIMPLY THAT HE DID NOT HAVE ANY WORK FOR THEM. HE DENIED TELLING FORGET THAT HE WAS LAID OFF BECAUSE OF HIS UNION MEMBERSHIP AND ASSERTED THAT WHEN FORGET WENT TO HIS HOUSE ON JANUARY 29TH WITH THE LETTER FROM THE UNION HE TOLD HIM THAT HE COULD NOT DO ANYTHING FOR THEM IN ANY EVENT BECAUSE HE HAD NO WORK. AFTER JANUARY 29TH THERE WAS A DAY'S WORK LEFT AT ST. JUDES CHURCH FOR TWO CARPENTERS NOT 5. HE HAS NOT HIRED ANY CARPENTERS OR LABOURERS SINCE JANUARY 29TH AND THE OTHERS WERE ALSO LAID OFF. HE SAID THAT HE EXPECTED TO GET WORK IN THE SPRING AND HAS NO REASON NOT TO RE-EMPLOY EITHER OF THE AGGRIEVED PERSONS WHEN WORK IS AVAILABLE. IN SUPPORT OF THE RESPONDENT'S REPLY TO THE APPLICATION, EVIDENCE WAS GIVEN BY MR. RALPH, BOOKKEEPER FOR THE RESPONDENT; FATHER CHAMPAGNE OF ST. JUDES CHURCH; ANDRE BREAUULT; ROLAND LEFEBVRE AND LIONEL MENARD. IT IS NOT NECESSARY TO DEAL IN ANY LENGTH WITH THEIR TESTIMONY BUT THE SUBSTANCE WAS THAT THERE WAS VERY LITTLE WORK LEFT TO DO AT ST. JUDES CHURCH AFTER JANUARY 28TH AND THAT THE RESPONDENT HAS NOT HIRED CARPENTERS SINCE THAT TIME BUT ONLY HIRED ONE WELDER TO REPLACE ANOTHER EMPLOYEE WHO WAS SICK. THE RESPONDENT HAD NO DEFINITE CONTRACTS FOR WORK ON HAND.

5. THE APPLICANT IN CASES OF THIS NATURE HAS A PRIMARY OBLIGATION TO SATISFY THE BOARD BY SUBSTANTIAL CREDIBLE EVIDENCE THAT THE AGGRIEVED PERSONS WERE DISCRIMINATED AGAINST BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT. THIS IS A HEAVY ONUS AND AN EMPLOYEE'S MERE SUSPICIONS OF WRONG DOINGS BY HIS EMPLOYER IN CONNECTION WITH HIS DISCHARGE OR LAY OFF ARE NOT ALONE, SUFFICIENT EVIDENCE TO MEET THIS ONUS. IT IS READILY APPARENT THAT IN THE INSTANT CASE THE AGGRIEVED PERSONS BELIEVED THAT THEY WERE LAID OFF BECAUSE OF THEIR UNION ACTIVITY BUT THE EVIDENCE BEFORE THE BOARD DOES NOT SUBSTANTIATE THEIR CLAIMS IN THAT REGARD. ASSUMING, HOWEVER, THAT THE COMPLAINANT HAD MET THE PRIMARY ONUS ON IT, IT IS OUR OPINION THAT THE RESPONDENT IN REPLY, AMPLY ESTABLISHED THAT THE LAY OFFS WERE FOR PROPER BUSINESS REASONS SO AS TO BE A SUFFICIENT ANSWER TO THE COMPLAINT.

6. HAVING CONSIDERED ALL THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES IN THIS MATTER THE BOARD IS NOT SATISFIED THAT THE AGGRIEVED PERSONS, MARCEL FORGET AND GEORGE CHARTRAND, WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AS ALLEGED BY THE COMPLAINANT.

7. THE APPLICATION IS ACCORDINGLY DISMISSED.

14356-67-U: ANTON F. GUTSFELD (COMPLAINANT) V. INTERNATIONAL HARVESTER COMPANY - HAMILTON WORKS AND UNITED STEELWORKERS UNION OF AMERICA - UNION OFFICERS AND UNION OFFICERS FROM THE LOCAL 2868 OF NAMED UNION (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MARCH 25, 1968.

1. THE COMPLAINANT HAS FILED A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE RELIEF SOUGHT IS AS FOLLOWS:

IT IS MY WISH THAT MY COMPLAINT AND CLAIM
BECOMES UNDER THE JURISDICTION OF AN
APPOINTED ARBITRATION BOARD.

2. IT APPEARS THAT THE COMPLAINANT, A FORMER EMPLOYEE OF THE INTERNATIONAL HARVESTER COMPANY AT ITS HAMILTON WORKS WAS INJURED AND SUBSEQUENTLY FILED A GRIEVANCE. IT IS ALLEGED THAT THIS GRIEVANCE WAS NOT PROCEEDED WITH. THIS BOARD HAS NO JURISDICTION UNDER SECTION 65 OF THE LABOUR RELATIONS ACT TO GRANT THE RELIEF REQUESTED THAT IS, IN EFFECT, TO DIRECT THE RESPONDENTS TO PROCESS A GRIEVANCE THROUGH TO ARBITRATION.

3. IN ADDITION, IT APPEARS FROM THE DECISION OF THIS BOARD DATED MARCH 6, 1963, IN A CASE BETWEEN ANTON GUTSFELD, AND INTERNATIONAL HARVESTER COMPANY (HAMILTON WORKS) AND 2868 - LOCAL STEELWORKER UNION OF UNITED STEELWORKER UNION OF AMERICA, BOARD FILE NO. 5187-62-U, THAT THE MATTERS ALLEGED IN THE PRESENT COMPLAINT WERE BEFORE THE BOARD IN THE DECISION REFERRED TO. IN OTHER WORDS, THE COMPLAINANT IN THIS CASE IS SEEKING TO RE-OPEN SOME FIVE YEARS LATER MATTER WHICH WERE DEALT WITH BY THE BOARD IN ITS EARLIER DECISION.

4. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE COMPLAINT DOES NOT, IN THE OPINION OF THE BOARD, MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS HEREBY DISMISSED.

INDEXED ENDORSEMENT - SECTION 39(3)

14102-67-M: CANADA BUILDING MATERIALS LIMITED, WOODBRIDGE, ONTARIO,
AND CONCRETE BLOCK AND BRICKWORKERS ASSOCIATION, LOCAL 33, AFFILIATED
WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (JOINT APPLICANTS) V.
TEAMSTERS LOCAL UNION No. 230 READY-MIX, BUILDING SUPPLY, HYDRO &
CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS; INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN, AND HELPERS (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: R. V. BRADLEY, GERALD VANDEZANDE AND JACK
MILLER FOR THE JOINT APPLICANTS AND L. A. MACLEAN, W. CASEY FOR THE
INTERVENER.

DECISION OF THE BOARD: MARCH 19, 1968.

1. THIS IS A JOINT APPLICATION FOR EARLY TERMINATION OF A COLLEC-
TIVE AGREEMENT. THE AGREEMENT CURRENTLY IN EFFECT BETWEEN THE PARTIES
HERETO BECAME EFFECTIVE ON JUNE 21ST, 1965 AND WOULD EXPIRE ON AUGUST
31ST, 1968. OBVIOUSLY IF THE BOARD CONSENTED TO THE PARTIES' APPLICA-
TION THE NORMAL "OPEN SEASON" DURING WHICH AN APPLICATION FOR A DECLARA-
TION TERMINATING BARGAINING RIGHTS OR AN APPLICATION FOR CERTIFICATION
BY ANOTHER TRADE UNION WOULD BE DENIED.

2. NOTICE OF THE APPLICATION WAS POSTED PURSUANT TO THE DIRECTION
OF THE REGISTRAR OF THE BOARD AND THE INTERVENER HAS OBJECTED TO THE
APPLICATION. THE INTERVENER FILED WITH THE BOARD THREE APPLICATION FOR
MEMBERSHIP CARDS ON BEHALF OF THREE EMPLOYEES OF THE COMPANY APPLICANT.
COUNSEL FOR THE INTERVENER SUBMITTED THAT IF CONSENT WAS TO BE GRANTED
AT ALL IN THIS CASE THE BOARD SHOULD NOT SHUT OUT THE OPPORTUNITY OF
THE INTERVENER TO ORGANIZE. FURTHER HE STATED THAT THE INTERVENER HAD
RELIED ON THE PROVISIONS OF THE ACT WITH RESPECT TO THE "OPEN SEASON"
FOR THE CURRENT CONTRACT BETWEEN THE APPLICANTS HERETO AND ALLEGED THAT
THIS SHOULD REMAIN AVAILABLE TO IT WHERE IT HAS OBJECTED AND SUBMITTED
EVIDENCE OF MEMBERSHIP FOR EMPLOYEES IN THE BARGAINING UNIT INVOLVED.

3. IN OUR OPINION THE PRINCIPLES SET OUT BY THE BOARD IN THE
NATIONAL CASH REGISTER COMPANY CASE, O.L.R.B. MONTHLY REPORTS APRIL
1967, P. 90 AND IN THE FIRESTONE TIRE & RUBBER COMPANY LIMITED CASE,
54 CLLC 1484, SHOULD BE APPLIED IN THE INSTANT CASE. IN THE NATIONAL
CASH REGISTER CASE THE BOARD SAID AT P. 92:

5. COUNSEL FOR THE APPLICANT TRADE UNION URGED
THAT THE INTERVENER SHOULD BE REQUIRED TO SHOW A
SUBSTANTIAL DEGREE OF SUCCESSFUL ORGANIZATION
AMONG EMPLOYEES OF THE COMPANY BEFORE THE BOARD
WOULD GIVE SERIOUS CONSIDERATION TO ITS OBJECTION.

ON THIS COUNT, IT IS NOTEWORTHY THAT IN THE FIRESTONE CASE THE BOARD PRESERVED AN OPEN SEASON EVEN THOUGH THERE WAS NO EVIDENCE WHATEVER THAT ANY OTHER UNION SOUGHT TO REPRESENT EMPLOYEES. IT IS OUR VIEW THAT THE BOARD OUGHT NOT TO ATTEMPT TO ASSESS THE CHANCES OF SUCCESS OF ANY UNION'S ORGANIZATION CAMPAIGN NOR SHOULD IT ATTEMPT TO ESTABLISH WHAT MIGHT CONSTITUTE A "SUBSTANTIAL DEGREE OF SUCCESSFUL ORGANIZATION" IN ANY PARTICULAR CASE.

6. IN OUR VIEW, IT IS OF VITAL IMPORTANCE THAT AN OPEN SEASON BE PRESERVED AT LEAST WHERE ANY PERSON OR ORGANIZATION HAVING AN INTEREST TAKES OBJECTION TO ITS FORECLOSURE. IT HAS NOT BEEN THE BOARD'S PRACTICE IN RECENT YEARS TO PRESERVE THE OPEN SEASON WHERE NO OBJECTION HAS BEEN TAKEN TO A JOINT APPLICATION OF THIS SORT. THUS, IN A JOINT APPLICATION BY THE INSTANT EMPLOYER AND THE CANADIAN OFFICE EMPLOYEES UNION No. 159 N.C.C.L., BOARD FILE No. 12757-67-M, THE BOARD ON APRIL 12TH, 1967, GRANTED CONSENT TO THE TERMINATION EFFECTIVE JANUARY 1ST, 1967 OF A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THOSE PARTIES. WHERE THERE IS OBJECTION TAKEN, HOWEVER, IT IS OUR VIEW THAT FORECLOSURE OF THE OPEN SEASON WOULD CONSTITUTE A DENIAL OF THE RIGHTS OF EMPLOYEES UNDER THE LABOUR RELATIONS ACT.

4. HAVING REGARD TO THE FOREGOING THE BOARD CONSENTS TO THE EARLY TERMINATION OF THE COLLECTIVE AGREEMENT NOW IN EFFECT BETWEEN THE APPLICANTS HERETO AS OF MAY 19TH, 1968 BEING TWO MONTHS FROM THE DATE OF THIS ENDORSEMENT. THE BOARD DIRECTS THAT COPIES OF THIS ENDORSEMENT BE POSTED IN CONSPICUOUS PLACES ON THE PREMISES OF THE EMPLOYER IN ACCORDANCE WITH THE INSTRUCTIONS TO BE ISSUED BY THE REGISTRAR.

INDEXED ENDORSEMENT - SECTION 79A

14001-67-M: THE LUMBER AND SAWMILL WORKERS UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (TRADE UNION) V. RAYMOND COTE (EMPLOYER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS J. E. C. ROBINSON AND O. HODGES.

APPEARANCES AT HEARING: L. A. MACLEAN, RENE BRIXHE FOR THE APPLICANT, H. L. MORPHY FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER J. E. C. ROBINSON: MARCH 13, 1968.

1. THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT OF THE QUESTION WHETHER THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT.

2. THE TRADE UNION REPRESENTS A UNIT OF EMPLOYEES OF A.COTE CONTRACTOR, ENGAGED IN WOODS OPERATIONS ON OR ORIGINATING ON THE LIMITS OF THE EMPLOYER WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT AND THERE WAS A COLLECTIVE AGREEMENT MADE BETWEEN THE TRADE UNION AND A. COTE CONTRACTOR, DATED OCTOBER 5TH, 1966. THE EFFECTIVE DATE OF THE COLLECTIVE AGREEMENT WAS JULY 29TH, 1966 AND IT CONTINUED IN FORCE UNTIL AUGUST 1ST, 1968. IT IS THE CONTENTION OF THE TRADE UNION IN THE INSTANT MATTER THAT ALBERT COTE (HEREINAFTER CALLED ALBERT) SOLD HIS BUSINESS TO HIS SON, RAYMOND COTE (HEREINAFTER CALLED RAYMOND) WITHIN THE MEANING OF SECTION 47A OF THE ACT AND THUS IT HAS THE RIGHT TO GIVE THE NOTICE TO RAYMOND AND TO THEREAFTER APPLY TO THE MINISTER OF LABOUR FOR CONCILIATION SERVICES. THE EMPLOYER DENIES THAT ALBERT SOLD HIS BUSINESS TO HIM AND STATES THAT HE COMMENCED A NEW BUSINESS; THEREFORE THE TRADE UNION DOES NOT HAVE THE RIGHT TO GIVE NOTICE TO BARGAIN TO HIM.

3. BRIEFLY THE EVIDENCE IS THAT ALBERT OPERATED A WOODS BUSINESS IN THE ANSONVILLE AREA FOR APPROXIMATELY TWENTY YEARS PRIOR TO JUNE, 1967, EMPLOYING TWENTY OR MORE MEN. FOR FOURTEEN OF THOSE YEARS HIS SON RAYMOND WORKED FOR HIM AS A FOREMAN. A BANK ACCOUNT WAS KEPT FOR HIS BUSINESS IN THE JOINT NAMES OF ALBERT AND RAYMOND, EACH HAVING SIGNING AUTHORITY FOR IT. RAYMOND MADE UP THE PAYROLL FOR THE BUSINESS AND PAID THE EMPLOYEES BY CHEQUES DRAWN ON THIS ACCOUNT AND SIGNED BY HIM. RAYMOND TESTIFIED THAT THE MONEY IN THIS ACCOUNT BELONGED TO HIS FATHER AND WAS USED ONLY FOR HIS FATHER'S BUSINESS, AND FURTHER THAT HE HAD NO FINANCIAL INTEREST WHATSOEVER IN HIS FATHER'S BUSINESS. IN THE COURSE OF HIS BUSINESS ALBERT ENTERED INTO CONTRACTS WITH BEAVERWOOD FIBRE FOR THE RIGHT TO CUT TIMBER IN CERTAIN AREAS AND WITH ABITIBI PAPER COMPANY LIMITED FOR THE SALE OF THE TIMBER. IT IS THE EVIDENCE THAT THE LAST CONTRACT MADE BETWEEN ALBERT AND ABITIBI WAS ON JUNE 6TH, 1967 FOR THE SALE OF 500 CORDS OF WOOD. ALBERT RECEIVED IN ACCORDANCE WITH THE TERMS OF THAT CONTRACT PART PAYMENT FOR CUTTING THE WOOD IN JULY AND HE REMAINS UNDER THE OBLIGATION TO COMPLETE THIS CONTRACT IN 1968 AFTER WHICH THE BALANCE DUE UNDER THE CONTRACT WILL BE PAID TO HIM. ALL PAYMENTS ON ACCOUNT OF SUCH CONTRACTS HAVE ALWAYS BEEN MADE TO ALBERT. AS OF JUNE, 1967 HE HAD AN INVENTORY OF 620 CORDS OF WOOD WHICH HAD BEEN CUT AND PILED AVAILABLE FOR DELIVERY IN FULFILLMENT OF HIS CONTRACT.

4. RAYMOND TESTIFIED THAT HIS FATHER STOPPED HIS BUSINESS IN JUNE, DISCHARGED ALL HIS EMPLOYEES AT THAT TIME, CLOSED THE BUSINESS BANK ACCOUNT AND WILL MAKE ARRANGEMENTS FOR COMPLETION OF HIS CONTRACT WITH SOMEONE OTHER THAN RAYMOND. RAYMOND SAID THAT HE STARTED HIS OWN BUSINESS TO CUT AND HAUL WOOD. ON JUNE 28TH, 1967, HE ENTERED INTO A WRITTEN CONTRACT WITH ABITIBI PAPER COMPANY LIMITED FOR THE SALE OF WOOD,

DELIVERY TO BE COMPLETED PRIOR TO MARCH 31st, 1968. AT THE SAME TIME HE ARRANGED AN ORAL AGREEMENT WITH BEAVERWOOD FIBRE FOR THE RIGHT TO CUT TIMBER IN THE GENERAL AREA WHERE HIS FATHER HAD HIS OPERATIONS. SOME TIME THEREAFTER HE AGREED TO RENT FROM HIS FATHER THE EQUIPMENT THAT HE HAD USED IN HIS WOODS OPERATIONS UNTIL FEBRUARY 1968, AT A PAYMENT OF \$2.00 PER CORD. THE EQUIPMENT WHICH HE OBTAINED INCLUDED 19 SHACKS, A SWAMP BUGGY, 3 CRAWLERS, 5 SLEIGHS, 2 TRACTOR SLEEPS, 2 TEAMS OF HORSES AND 2 TRACTORS. AFTER ALBERT HAD STOPPED HIS WOODS OPERATIONS, HE OBTAINED A CONTRACT WITH A HIGHWAY CONTRACTOR IN THE AREA FOR THE RENTAL OF A TRACTOR AND DRIVER. RAYMOND WORKED FOR HIS FATHER AS THE DRIVER ON THIS JOB UNTIL ABOUT THE MIDDLE OF SEPTEMBER. RAYMOND HIRED TWO MEN IN AUGUST, A FEW MORE IN SEPTEMBER AND EMPLOYED ABOUT 15 PERSONS BY THE END OF NOVEMBER. FOUR OF THESE EMPLOYEES HAD PREVIOUSLY WORKED FOR HIS FATHER. RAYMOND OPENED A BANK ACCOUNT FOR HIS BUSINESS AND PAYS HIS EMPLOYEES BY CHEQUES DRAWN ON THAT ACCOUNT. HE STATED THAT HIS CONTRACT WITH ABITIBI WOULD BE COMPLETED BY THE END OF FEBRUARY, 1968 AND HE WOULD THEN PAY HIS FATHER FOR THE RENTAL OF THE EQUIPMENT.

5. ANDRE AUDET PRESENTLY AN EMPLOYEE OF RAYMOND TESTIFIED THAT HE HAD WORKED FOR ALBERT FOR ABOUT 5 YEARS PRIOR TO JUNE 1967, DURING WHICH TIME RAYMOND WAS THE FOREMAN AND HE SAID THAT HE KNEW THAT ALBERT WAS THE OWNER. HE STATED THAT WORKERS IN BUSH OPERATIONS MOVE QUITE FREQUENTLY FROM CAMP TO CAMP AND HE HAD WORKED FOR OTHER PERSONS AS WELL AS ALBERT DURING THAT TIME. IN JUNE HE WAS LAID OFF ALONG WITH ALL THE OTHER EMPLOYEES BY ALBERT WHO TOLD HIM THAT HE WAS GOING OUT OF BUSINESS AND IT WOULD BE SHUT DOWN. AUDET WORKED ELSEWHERE IN THE SUMMER MONTHS BUT AT SOME TIME HE HEARD THAT RAYMOND HAD STARTED A NEW BUSINESS AND SUBSEQUENTLY WAS HIRED BY RAYMOND IN OCTOBER. HE SAID THAT HE KNEW THAT RAYMOND WAS THE OWNER OF THE BUSINESS AT THAT TIME AND BELIEVED THAT THE BUSINESS HAD BEEN GOING ON FOR ABOUT A MONTH BEFORE HE WAS HIRED. HE STATED THAT HE WAS NOW WORKING IN THE SAME GENERAL AREA AND THE SAME EQUIPMENT WAS BEING USED AS BEFORE JUNE, 1967, EXCEPT THAT A NEW TRACTOR HAD BEEN ADDED. HE ALSO TESTIFIED THAT IN THIS TYPE OF BUSINESS THE SUMMER IS THE CUTTING TIME AND THE WINTER IS FOR HAULING AND IF A PULP CUTTER MISSES JULY AND AUGUST HE MISSES THE BEST TWO MONTHS OF THE YEAR. MR. VAN VLYMEN, A DISTRICT FORESTER WITH ABITIBI PAPER COMPANY LIMITED AT IROQUOIS FALLS TESTIFIED THAT HE HAD IN THE PAST, NEGOTIATED WITH ALBERT A SERIES OF CONTRACTS FOR THE PURCHASE OF WOOD, THE LAST OF WHICH WAS ON JUNE 6TH, 1967. HE HAD THROUGHOUT THIS PERIOD DEALT ONLY WITH ALBERT IN THIS REGARD. UNDER THE LAST CONTRACT THERE HAD BEEN A PARTIAL PAYMENT MADE TO ALBERT ON JULY 7TH, 1967 AND ALL PAYMENTS UNDER THE CONTRACTS HAD BEEN MADE DIRECTLY TO ALBERT. HE FURTHER TESTIFIED THAT HE NEGOTIATED A CONTRACT WITH RAYMOND ON JUNE 28TH, 1967 AT WHICH TIME RAYMOND HAD TOLD HIM THAT HE WAS STARTING HIS OWN BUSINESS. SINCE THAT TIME THERE HAVE BEEN PARTIAL PAYMENTS MADE TO RAYMOND ACCORDING TO THE TERMS OF THAT CONTRACT.

6. WHAT THE BOARD HAS BEEN ASKED TO DETERMINE IS WHETHER ALBERT SOLD HIS BUSINESS TO RAYMOND WITHIN THE MEANING OF THE ACT. THE WORD "SELLS" IS DEFINED IN THE ACT TO INCLUDE "LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION". TO QUALIFY, HOWEVER, UNDER THE PROVISIONS OF SECTION 47(A)(2) OF THE ACT IT MUST BE ESTABLISHED NOT ONLY THAT A SALE TOOK PLACE BUT WHAT WAS SOLD WAS A PART OR PARTS OF A BUSINESS. THE MEANING TO BE ATTACHED TO THE WORD "BUSINESS" DEPENDS TO A GREAT EXTENT ON THE NATURE OF THE FACTS AND CIRCUMSTANCES IN EACH PARTICULAR CASE. IT CANNOT BE SAID THAT ANY ONE FACET OF AN ENTERPRISE TAKEN BY ITSELF NECESSARILY COMPRISES A BUSINESS. IT HAS BEEN EXPRESSED THAT A BUSINESS IS "THE TOTALITY OF THE UNDERTAKING". THE PHYSICAL ASSETS OF BUILDINGS, TOOLS AND EQUIPMENT USED IN A BUSINESS ARE NOT NECESSARILY THE UNDERTAKING PER SE BUT ARE, ALONG WITH MANAGEMENT AND OPERATING PERSONNEL AND THEIR SKILLS, NECESSARY IN THE OPERATIONS TO FULFILL THE OBLIGATIONS UNDERTAKEN WITH A HOPE OF PRODUCING A PROFIT TO ASSURE ITS SUCCESS. THE TOTAL OF THESE THINGS ALONG WITH CERTAIN INTANGIBLES SUCH AS GOOD WILL CONSTITUTE A BUSINESS. IN THE INSTANT CASE THE EQUIPMENT WHICH RAYMOND OBTAINED ARE THE NECESSARY TOOLS FOR THE PERFORMANCE OF HIS CONTRACTURAL OBLIGATIONS BUT THE EQUIPMENT ALONE IN THIS TYPE OF UNDERTAKING IS NOT THE BUSINESS. IT IS ESSENTIAL IN THIS PARTICULAR TYPE OF ENDEAVOUR TO HAVE THE RIGHT TO CUT WOOD AND A RIGHT TO DISPOSE OF IT. WHEN RAYMOND OBTAINED THE CONTRACTS COVERING BOTH OF THESE INGREDIENTS HE WAS IN BUSINESS AND THEN WAS IN A POSITION TO DETERMINE THE WAYS AND MEANS OF ITS OPERATION. IN THIS REGARD AN IMPORTANT CONSIDERATION IS THAT RAYMOND DID NOT TAKE OVER HIS FATHER'S CONTRACTS BUT NEGOTIATED AND OBTAINED CONTRACTS FOR HIS OWN ACCOUNT AND ON THE REPRESENTATION THAT HE HAD COMMENCED HIS OWN BUSINESS.

7. ANOTHER FACTOR IN THIS CASE IS OF COURSE, THE CLOSE FAMILY RELATIONSHIP WHICH EXISTED. THIS, HOWEVER, CANNOT BE ALLOWED TO CLOUD THE REAL ISSUES WHICH THE BOARD MUST DETERMINE. SUCH A RELATIONSHIP DOES NOT BY ITS MERE EXISTENCE PRECLUDE A SON FROM COMMENCING A BUSINESS SEPARATE AND DISTINCT FROM HIS FATHER'S. IT IS CLEAR THAT ALBERT OPERATED HIS OWN BUSINESS AND DURING THAT TIME RAYMOND WAS EMPLOYED BY HIM AS A FOREMAN. HE HAD NO FINANCIAL INTEREST IN IT AND HIS AUTHORITY WAS LIMITED TO THE USE OF THE BUSINESS BANK ACCOUNT FOR PAYROLL PURPOSES WITHIN HIS RESPONSIBILITIES AS A FOREMAN. IT IS ALSO SIGNIFICANT THAT THERE WAS NO CONTINUITY OF OPERATIONS BETWEEN THE TWO BUSINESSES. ALBERT LAID OFF ALL HIS EMPLOYEES EARLY IN JUNE AND DESPITE THE FACT THAT THE SUMMER MONTHS ARE THE BEST CUTTING TIME, RAYMOND DID NOT START TO CUT WOOD UNTIL SOME TIME IN AUGUST WHEN HE HIRED TWO MEN AND SUPERVISED THEM IN HIS SPARE TIME FROM THE HIGHWAY JOB ON WHICH HE WAS THEN WORKING. A SUBSTANTIAL SHUT DOWN IN THIS PARTICULAR TYPE OF BUSINESS AT THE TIME IT OCCURRED WOULD USUALLY RESULT IN A SERIOUS FINANCIAL LOSS FOR A BUYER AND THIS CIRCUMSTANCE IS NOT CONSISTENT WITH THE ALLEGATION THAT RAYMOND CONTINUED OR PURCHASED HIS FATHER'S BUSINESS. ALTHOUGH FOUR OF RAYMOND'S EMPLOYEES HAD PREVIOUSLY WORKED FOR HIS FATHER, HAVING REGARD TO THE MOBILITY OF SUCH WORKERS IT IS QUITE EVIDENT

THAT HE DID NOT TAKE OVER HIS FATHER'S EMPLOYEES AS WOULD NORMALLY BE EXPECTED IN THE SALE OF A BUSINESS. RAYMOND SUPERVISES HIS EMPLOYEES, HE AND HIS WIFE MAKE UP THE PAYROLL SHEETS AND HE PAYS THEM BY CHEQUE DRAWN ON HIS BUSINESS BANK ACCOUNT. THERE IS NO EVIDENCE THAT ALBERT PARTICIPATES IN RAYMOND'S BUSINESS. FURTHER, ALBERT REMAINS THE OWNER OF THE EQUIPMENT WHICH HE RENTED TO RAYMOND AND IS ENTITLED TO THEIR RETURN AT THE END OF FEBRUARY 1968, TOGETHER WITH PAYMENT FOR THEIR USE IN ACCORDANCE WITH THE AGREEMENT MADE BETWEEN THEM.

8. IT IS OUR CONCLUSION THEREFORE, ON THE BASIS OF ALL THE EVIDENCE BEFORE US THAT WHAT TRANSPIRED BETWEEN RAYMOND COTE AND ALBERT COTE DID NOT CONSTITUTE THE SALE OF A BUSINESS WITHIN THE MEANING OF THE ACT.

9. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS: "THE TRADE UNION IS NOT ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT.

DECISION OF BOARD MEMBER OLIVER HODGES: MARCH 13, 1968.

I DISSENT.

1. MY OPINION AND FINDING IS THAT RAYMOND COTE DID ACQUIRE THE BUSINESS OF HIS FATHER ALBERT COTE THROUGH A TRANSACTION WITHIN THE MEANING OF SECTION 47A OF THE ONTARIO LABOUR RELATIONS ACT, AND THAT THE UNION THEREFORE IS ENTITLED TO GIVE NOTICE OF A DESIRE TO BARGAIN TO THE NEW EMPLOYER - RAYMOND COTE, AND TO THEREAFTER APPLY TO THE MINISTER OF LABOUR FOR CONCILIATION SERVICES.

2. THE NATURAL ORDER OF THINGS REQUIRES DUE WEIGHT TO BE GIVEN TO THE FATHER-SON RELATIONSHIP IN THIS TRANSFER OF ASSETS, A GIFT FOR ALL PRACTICAL CONSIDERATIONS. ALBERT IS 72 YEARS OF AGE. HE HAS OWNED THE BUSINESS FOR TWENTY YEARS, BUT FOR THE LAST FOURTEEN YEARS RAYMOND HAS BEEN FOREMAN AND ENJOYED CHEQUE WRITING AUTHORITY ON A COMPANY BANK ACCOUNT IN THE NAMES OF HIS FATHER AND HIMSELF. RAYMOND WROTE THE CHEQUES TO PAY HIMSELF AND THE EMPLOYEES. ALTHOUGH ALBERT WAS PRESENT AT THE HEARING, HE WAS NOT CALLED TO GIVE EVIDENCE IN SUPPORT OF THE PROPOSITION ADVANCED BY RAYMOND AS TO HIS FATHER'S RETENTION OF THE BUSINESS WITH A VIEW TO 'MAYBE' STARTING UP AGAIN IN SPRING OF 1968, OR THE "RENTAL" OF EQUIPMENT TO RAYMOND, OR THE INTERESTING FACT OF A \$3,700 TRACTOR SIMPLY GIVEN TO RAYMOND. ALBERT COULD ALSO HAVE EXPLAINED WHY THE WOOD HE HAD CUT WOULD NOT BE DELIVERED BY RAYMOND IN ORDER TO FULFILL ALBERT'S CONTRACT, BUT RATHER BY SOMEONE ELSE AS RAYMOND SAID IN HIS EVIDENCE.

3. RAYMOND RECEIVED FROM ALBERT SOME \$6,300 WORTH OF EQUIPMENT AND BUILDINGS, EVERYTHING THAT ALBERT USED TO OPERATE A WOODS CUTTING OPERATION, ALL FOR A LEASE OR RENTAL OF ONLY \$2.00 A CORD. THIS RENTAL ARRANGEMENT DID NOT INCLUDE THE \$3,700 TRACTOR MENTIONED EARLIER, FOR WHICH NO EXPLANATION IS OFFERED.

4. RAYMOND'S ALSO ACQUIRED ALBERT'S BUSINESS GOODWILL AS IS EVIDENCED BY RAYMOND'S ORAL AGREEMENT WITH BEAVER FIBRES TO CONTINUE CUTTING WHERE ALBERT HAD CUT UNDER AGREEMENT WITH BEAVER FIBRES EARLIER IN 1967. RAYMOND ALSO READILY GOT A CONTRACT WITH ABITIBI FOR THE SALE OF HIS OWN WOOD.

5. HOW COULD ALBERT RETAIN A BUSINESS WHEN ALL HIS EQUIPMENT IS HELD BY RAYMOND, WHEN A CONTRACT FOR CUTTING RIGHTS IN THE STAND OF TIMBER WHERE HIS SHACKS (NOW POSSESSED BY RAYMOND) ARE LOCATED, AND INDEED WHEN 20% TO 25% OF HIS WORKFORCE ARE NOW EMPLOYED BY RAYMOND? WHAT DID ALBERT HAVE WHICH RAYMOND DOESN'T HAVE NOW, THAT COULD BE CALLED A "BUSINESS"? IS THIS VENDOR ABLE TO CONDUCT HIS BUSINESS AT ALL DURING THE PERIOD THAT THE PURCHASER CARRIES ON BUSINESS? OBVIOUSLY THE ANSWER IS NO. IN THIS PARTICULAR CASE ALBERT IS NOT ABLE TO CONDUCT HIS WOODS OPERATIONS AT ALL.

6. IN THE CASE OF DUTCH BOY FOOD MARKETS, O.L.R.B. FILE NO. 10220-65-M, THE BOARD SAID IN PART:

HAD KITCHENER FOOD ONLY PURCHASED THE CONTENTS OF THE PREMISES AT 274 HIGHLAND ROAD AND MOVED THEM INTO OTHER PREMISES WE WOULD HAVE NO DIFFICULTY IN FINDING THAT THE TRANSACTION WAS ONLY THE SALE OF ASSETS. IN THE INSTANT CASE, HOWEVER, KITCHENER FOOD ACQUIRED NOT JUST ASSETS, BUT STEINBERG'S ENTIRE INTEREST IN THE PREMISES. STATED ANOTHER WAY STEINBERG'S DISPOSED OF ITS ENTIRE OPERATION IN THE KITCHENER AREA WHICH OBVIOUSLY MUST HAVE HAD SOME EFFECT ON ITS OPERATIONS IN ONTARIO. IF BY THE TERMS OF THE TRANSACTION STEINBERG'S HAD BEEN RESTRICTED FROM CARRYING ON BUSINESS IN THE SAME AREA WE WOULD HAVE NO HESITATION IN SAYING THAT THERE WAS A SALE OF A "BUSINESS" WITHIN THE MEANING OF SECTION 47A OF THE ACT. THE ABSENCE OF SUCH COVENANT, HOWEVER, IS NOT BY ANY MEANS CONCLUSIVE THAT THERE WAS NOT A SALE OF A "BUSINESS".

A RETAIL FOOD SUPERMARKET, UNLIKE SOME OTHER BUSINESSES, HAS NO CUSTOMER ORDERS OR LISTS WHICH CAN BE TRANSFERRED TO A PURCHASER WHO INTENDS TO CARRY ON THE SAME TYPE OF BUSINESS. BY THE VERY NATURE OF A RETAIL FOOD BUSINESS, WITH THE EXCEPTION OF THE NAME, A VENDOR HAS NO GOODWILL WHICH HE CAN EFFECTIVELY GIVE OR WITHHOLD FROM A PURCHASER. THE SUCCESS OF A FOOD SUPERMARKET IS DEPENDENT, ON LARGE MEASURE, UPON THE

SUPPORT OF THE PEOPLE WHO LIVE IN THE AREA IN WHICH THE STORE IS LOCATED. ACCORDINGLY, ANY GOODWILL CONSISTS IN THE HABIT OF CUSTOMERS OF THE VENDOR CONTINUING TO PATRONIZE THE FOOD MARKET LOCATED ON THE SAME PREMISES. IF THERE WAS ANY GOODWILL TO BE ACQUIRED BY KITCHENER FOOD IT WAS INHERENT IN THE PREMISES THEMSELVES IN WHICH STEINBERG'S HAD CARRIED ON THE SAME TYPE OF BUSINESS AS THAT CARRIED ON BY KITCHENER FOOD. ACCORDINGLY, THE EXEMPTION OF GOODWILL FROM THE PURCHASE PRICE, IN OUR OPINION, HAS NO REAL MEANING.

(THE UNDERLINING IS MINE)

7. THE BOARD IN DUTCH BOY ALSO SAID:

IN OUR OPINION, THE FACT THAT THERE WAS A TIME LAPSE BETWEEN THE CESSATION OF STEINBERG'S OPERATIONS AND THE COMMENCEMENT OF OPERATIONS BY KITCHENER FOOD DOES NOT MAKE THE TRANSACTION ANY LESS THE SALE OF A "BUSINESS".

THE SAME MUST BE SAID OF THE TIME LAPSE BETWEEN THE CLOSING OF ALBERT'S OPERATION AND THE STARTING OF RAYMOND'S OPERATION, WITH ONLY A BREAK OF A FEW WEEKS.

8. THE LEGISLATION MUST BE CONSTRUED ACCORDING TO THE OBVIOUS INTENT OF THE LEGISLATURE, WHICH HAS SEEN FIT TO DEFINE "BUSINESS" AND "SELLS" IN SECTION 47A(1)(A)(B) VERY BROADLY INDEED. THE BOARD PUT SUCH A BROAD CONSTRUCTION ON THIS SECTION IN DUTCH BOY.

9. THE LEGISLATION IS MEANT TO CATCH SUCH A TRANSPARENT SCHEME AS IS EVIDENT IN THE INSTANT CASE, WHERE THE INTENT IS A SUBTLE SCHEME DEvised TO EVADE AND DEFEAT THE BARGAINING RIGHTS HELD BY A TRADE UNION.

10. MY ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS: "YES. THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT."

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -
CERTIFICATION

13536-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES AND CANADA LOCAL 905 (APPLICANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED (RESPONDENT).

BEFORE: J.F.W. WEATHERILL, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

DECISION OF THE BOARD: MARCH 18, 1968.

1. IN ITS ENDORSEMENT OF THE RECORD IN THIS MATTER DATED JANUARY 22ND, 1968, THE BOARD DISMISSED THE APPLICANT'S APPLICATION FOR CERTIFICATION AND IMPOSED THE USUAL SIX MONTHS BAR ON SIMILAR APPLICATIONS. BY LETTER TO THE REGISTRAR OF THE BOARD DATED FEBRUARY 23RD, 1968, THE APPLICANT HAS REQUESTED REVIEW OF ITS DECISION PURSUANT TO SECTION 79(1) OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT'S REQUEST APPEARS TO BE BASED UPON THE FOLLOWING GROUNDS:

(1) THAT TWO PERSONS, J. SNELGROVE AND S. WOLF WERE INCLUDED IN THE BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE ALTHOUGH THESE PERSONS WERE PART OF MANAGEMENT.

(2) THAT SINCE THERE WAS ONE SEGREGATED BALLOT CAST IN THE REPRESENTATION VOTE HELD IN THIS MATTER THE VOTE WAS NO LONGER A SECRET ONE.

3. AS TO ITEM (1) THIS MATTER HAS ALREADY BEEN A SUBJECT OF DETERMINATION BY THE BOARD. IN ITS ENDORSEMENT DATED DECEMBER 12TH, 1967, THE BOARD HAVING CONSIDERED THE REPORT OF ITS EXAMINER, DECLARED THAT MESSRS. SNELGROVE AND WOLF DID NOT EXERCISE MANAGERIAL FUNCTIONS AND WERE INCLUDED IN THE BARGAINING UNIT. NO OBJECTION WAS TAKEN TO THEIR INCLUSION ON THE VOTERS' LIST OR THEIR CASTING BALLOTS IN THE REPRESENTATION VOTE. THERE IS NO SUGGESTION OF ANY NEW EVIDENCE OR ARGUMENT NOT AVAILABLE TO THE APPLICANT AT THE TIME THE ISSUE WAS DETERMINED.

4. AS TO ITEM (2) THE BOARD IN ITS ENDORSEMENT DATED JANUARY 17TH, 1968 DECLARED THAT MRS. CLYDESDALE (THE EMPLOYEE IN QUESTION) DID NOT COME WITHIN THE BARGAINING UNIT AND DIRECTED THAT HER BALLOT NOT BE COUNTED. THIS DECLARATION, IT MAY BE NOTED, GAVE EFFECT TO THE APPLICANT'S OWN REPRESENTATIONS. IN ANY EVENT THE FACT IS THAT MRS. CLYDESDALE'S BALLOT WAS NOT COUNTED AND THE VOTE WAS SECRET.

5. IT SHOULD BE APPARENT FROM THE FOREGOING THAT THE APPLICANT'S REQUEST IS ENTIRELY WITHOUT MERIT. THE REQUEST IS ACCORDINGLY DENIED.

13701-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79 (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

DECISION OF THE BOARD: . MARCH 28, 1968.

1. THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF FEBRUARY 14TH, 1968, IN THIS MATTER, ON THREE GROUNDS.

2. THE APPLICANT'S FIRST GROUND FOR DECISION WOULD APPEAR TO BE BASED ON THE FACT THAT THE BOARD IN PARAGRAPH 4 OF ITS DECISION INDICATED THAT IT WAS NOT IN A POSITION TO REVIEW THE DECISION OF THE BOARD IN AN EARLIER CASE WHICH WAS DECIDED BY ANOTHER DIVISION OF THE BOARD. IF IT IS THE APPLICANT'S DESIRE TO HAVE THE EARLIER DECISION WHICH WAS MADE IN 1962 RECONSIDERED, THE REQUEST SHOULD BE MADE TO THE DIVISION OF THE BOARD THAT HEARD THAT CASE. HOWEVER, IT MUST BE RECOGNIZED THAT IN VIEW OF THE FACT THAT MORE THAN FIVE YEARS HAVE ELAPSED SINCE THAT DECISION WAS MADE, IT IS OUR OPINION THAT THE APPLICANT WOULD NOT MEET WITH MUCH SUCCESS, ESPECIALLY IN VIEW OF THE FACT THAT THE APPLICANT WAS NOT A PARTY IN THOSE PROCEEDINGS.

3. THE SECOND GROUND FOR THE APPLICANT'S REQUEST FOR RECONSIDERATION WOULD APPEAR TO BE BASED ON THE FACT THAT THE BOARD IN ITEM 8 OF ITS DECISION OF FEBRUARY 14TH IN THIS MATTER INDICATED THAT "THERE WAS NO EVIDENCE TO ESTABLISH WHETHER THE PROPORTION OF THE BARGAINING UNIT WORK NOW PERFORMED OUTWEIGHS THE MANAGERIAL FUNCTIONS OF THE CHIEF PLANT OPERATORS". IT WOULD APPEAR TO BE THE APPLICANT'S POSITION THAT IT WAS THE "BOARD'S RESPONSIBILITY TO ... CAUSE SUFFICIENT EVIDENCE TO BE PLACED BEFORE IT TO MAKE DECISIONS CONSISTENT WITH THE ACT". IF IT IS THE APPLICANT'S CONTENTION THAT THE BOARD MUST ASSUME RESPONSIBILITY FOR HAVING EVIDENCE ADDUCED, THE BOARD CANNOT AGREE WITH SUCH POSITION. THE ONUS OF ADDUCING EVIDENCE RESTS ON THE PARTIES TO THE PROCEEDINGS AND IF THERE IS INSUFFICIENT EVIDENCE TO SATISFY THE ONUS OF PROOF WHICH RESTS UPON A PARTY, THE APPLICANT IN THIS CASE, THE BOARD CANNOT ASSUME ANY RESPONSIBILITY FOR ANY SUCH LACK OF EVIDENCE SO LONG AS THE PARTIES HAVE HAD FULL OPPORTUNITY TO ADDUCE SUCH EVIDENCE AVAILABLE. IN THE INSTANT CASE, SUCH OPPORTUNITY WAS GIVEN TO THE PARTIES AND IF THERE WAS A FAILURE TO AVAIL THEMSELVES OF THIS OPPORTUNITY, THE RESPONSIBILITY FOR SUCH FAILURE MUST REST WITH THE PARTIES AND NOT WITH THE BOARD.

4. THE THIRD GROUND FOR THE APPLICANT'S REQUEST READS AS FOLLOWS:

WE HAVE HAD BROUGHT TO OUR ATTENTION SINCE THE DATE OF THE BOARD'S DECISION, ADDITIONAL EVIDENCE WHICH MATERIALLY BEARS ON THE MAIN POINTS COVERED IN THAT DECISION.

IT IS TO BE NOTED THAT THE APPLICANT HAS NOT ALLEGED THAT THE ADDITIONAL EVIDENCE IS NEW EVIDENCE WHICH WAS NOT AVAILABLE AT THE TIME OF THE EXAMINER'S INQUIRY. AS STATED ABOVE AND AS RECORDED IN ITEM 106 OF THE EXAMINER'S REPORT DATED JANUARY 3RD, 1968, IN THIS MATTER, "FULL OPPORTUNITY TO BE HEARD, TO EXAMINE AND CROSS-EXAMINE

THE WITNESSES AND TO INTRODUCE EVIDENCE BEARING ON THE ISSUE BEFORE ME WAS AFFORDED TO BOTH PARTIES". THERE IS NO SUGGESTION THAT THE ADDITIONAL EVIDENCE COULD NOT HAVE BEEN DISCOVERED WITH REASONABLE DILIGENCE PRIOR TO THE EXAMINER'S HEARING AND ADDUCED AT THE EXAMINER'S HEARING. SINCE THE PARTIES HAD FULL OPPORTUNITY TO INTRODUCE EVIDENCE BEARING ON ALL THE ISSUES AT THE HEARING OF THE EXAMINER, THE BOARD IS OF OPINION THAT TO RE-OPEN THE PROCEEDINGS AT THIS TIME TO PROVIDE THE APPLICANT WITH A FURTHER OPPORTUNITY WOULD NOT BE ADVISABLE IN THE CIRCUMSTANCES OF THIS CASE.

5. THE BOARD THEREFORE DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF FEBRUARY 14TH, 1968, IN THIS MATTER.

13766-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED, ST. THOMAS ASSEMBLY PLANT (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (INTERVENER).

- AND -

13793-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. FORD MOTOR COMPANY OF CANADA, LIMITED, ST. THOMAS ASSEMBLY PLANT (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: MARCH 7, 1968.

1. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, BY LETTER DATED FEBRUARY 24TH, 1968, HAS REQUESTED RECONSIDERATION OF THE BOARD'S DECISION IN THIS MATTER DATED DECEMBER 19TH, 1967. THE BOARD HAS ALSO RECEIVED SUBMISSIONS FROM THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AND THE RESPONDENT WITH RESPECT TO THE SAID REQUEST.

2. WITHOUT DEALING WITH THE QUESTION OF THE DELAY IN MAKING ITS REQUEST FOR RECONSIDERATION, THE APPLICANT DOES NOT REFER TO EVIDENCE OR ARGUMENTS NOT AVAILABLE TO IT AT THE HEARINGS IN TORONTO AND AT THE RESPONDENT'S PLANT AND WAS GIVEN AMPLE OPPORTUNITY TO MAKE ANY SUCH REPRESENTATIONS TO THE BOARD. IN ACCORDANCE WITH OUR USUAL PRACTICE IN SUCH CIRCUMSTANCES WE DO NOT DEEM IT ADVISABLE TO RECONSIDER OUR DECISION OF DECEMBER 19TH, 1967 IN THIS MATTER.

3. THE REQUEST OF THE APPLICANT IS THEREFORE DENIED.

13958-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772
(APPLICANT) v. THE NIAGARA WIRE WEAVING COMPANY LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

DECISION OF THE BOARD: MARCH 20, 1968.

1. BY LETTER DATED FEBRUARY 26TH, 1968, THE APPLICANT REQUESTED RECONSIDERATION OF THE BOARD'S DECISION IN THIS MATTER DATED FEBRUARY 20TH, 1968. THE BOARD ALSO RECEIVED IN THIS REQUEST A SUBMISSION FROM THE RESPONDENT BY LETTER DATED FEBRUARY 29TH, 1968.

2. THE APPLICANT IN ITS REQUEST HAS REFERRED TO SOME MATTERS WHICH MAY HAVE BEEN RELEVANT TO THE ISSUES IN THIS CASE. HOWEVER, THE APPLICANT HAD AMPLE OPPORTUNITY TO PRESENT SUCH EVIDENCE AND MAKE SUCH REPRESENTATIONS AS IT DEEMED NECESSARY AT THE EXAMINER'S HEARING AND AT THE HEARING BEFORE THE BOARD. THE APPLICANT IN ITS REQUEST REFERS TO THE BOARD'S RULING THAT IT WAS NOT ALLOWED TO PRESENT FURTHER EVIDENCE IN SUPPORT OF ITS ALLEGATIONS AT THE HEARING OF THE BOARD REQUESTED BY THE APPLICANT TO MAKE SUBMISSIONS CONCERNING THE REPORT OF THE EXAMINER. IT IS THE BOARD'S USUAL AND CONSISTENT PRACTICE NOT TO PERMIT FURTHER EVIDENCE TO BE INTRODUCED AT A HEARING HELD FOR THE PURPOSE OF CONSIDERING SUBMISSIONS ARISING OUT A REPORT OF AN EXAMINER UNLESS THERE ARE EXTENUATING REASONS SATISFACTORY TO THE BOARD THAT SUCH EVIDENCE WAS NOT PREVIOUSLY AVAILABLE.

3. SINCE THE APPLICANT HAS NOT ALLEGED NEW EVIDENCE OR ARGUMENTS WHICH WERE NOT PREVIOUSLY AVAILABLE TO IT AND SINCE ALL THE ISSUES RAISED BY THE APPLICANT WERE BEFORE THE BOARD PRIOR TO THE BOARD MAKING ITS DECISION THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER, REVOKE OR VARY ITS DECISION OF FEBRUARY 20TH, 1968 IN THIS MATTER.

4. THE REQUEST OF THE APPLICANT IS ACCORDINGLY DENIED.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 65

13902-67-U: JAMES SPEIRS (COMPLAINANT) v. A.M. WOOLFREY, OSHAWA,
GENERAL MOTORS LTD. (AUTOMOTIVE INDUSTRY) T.H. GLEN, TORONTO, BRITISH
AMERICAN OIL CO. LTD. (OIL & CHEMICAL CO.) K.G. COOKE, HAMILTON,
CANADIAN WESTINGHOUSE LTD. (ELECTRICAL INDUSTRY) L.G. KERR, DRYDEN,
DRYDEN PAPER CO. LTD. (PULP & PAPER INDUSTRY) N.H. WAGE, COPPER CLIFF,
INTERNATIONAL NICKEL (MINING INDUSTRY) JOHN LAWLER, HAMILTON, STEEL CO.
OF CANADA (STEEL INDUSTRY) J.L. MCINTYRE, SAULT STE. MARIE, ALGOMA STEEL
CO. LTD. (STEEL INDUSTRY) (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER
AND R. W. TEAGLE.

APPEARANCES AT HEARING: JAMES SPEIRS AND FRANK MAULE FOR THE COMPLAINANT, L. SANSBURG AND H. LYNCH APPEARING AS OBSERVERS, AND NO ONE APPEARING FOR THE RESPONDENTS.

DECISION OF THE BOARD: MARCH 12, 1968.

1. THIS IS A COMPLAINT FILED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT THE RESPONDENTS HAVE DEALT WITH HIM AND ONE OTHER NAMED AGGRIEVED PERSON (MR. MAULE) CONTRARY TO THE PROVISIONS OF SECTION 48 OF THE LABOUR RELATIONS ACT. ON NOVEMBER 23, 1967 THE BOARD DISMISSED THE COMPLAINT, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THAT IS, ON THE GROUND THAT THE COMPLAINANT DID NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED. THE COMPLAINANT HAVING REQUESTED REVIEW, THE BOARD ON DECEMBER 11, 1967 CONFIRMED ITS EARLIER DECISION.

2. IN BOTH DECISIONS THE BOARD FOUND THAT THERE WAS NOTHING ALLEGED IN THE COMPLAINT WHICH WOULD SUGGEST THAT THE RESPONDENTS HAD DEALT WITH THE COMPLAINANT AND MR. MAULE CONTRARY TO THE PROVISIONS OF SECTION 48. IN ADDITION, THE BOARD FOUND THAT IT WAS WITHOUT JURISDICTION TO GRANT THE RELIEF SOUGHT BY THE COMPLAINANT.

3. AS A RESULT OF FURTHER COMMUNICATIONS FROM THE COMPLAINANT, THE BOARD LISTED THE MATTER FOR HEARING TO ENABLE HIM TO SHOW CAUSE WHY THE BOARD SHOULD RECONSIDER ITS EARLIER DECISION. AT THE HEARING THE BOARD EXPLAINED TO THE COMPLAINANT AND MR. MAULE THAT THE PURPOSE OF THE HEARING WAS TO ENABLE THEM TO MAKE REPRESENTATIONS TO THE BOARD ON THE QUESTION OF THE APPLICABILITY OF SECTION 48 TO THE ALLEGATIONS FORMING THE BASIS OF THEIR COMPLAINT. THE BOARD DID NOT HEAR EVIDENCE AS SUCH BUT EVERY OPPORTUNITY WAS AFFORDED THE COMPLAINANT AND MR. MAULE TO EXPLAIN THEIR POSITION TO THE BOARD. THE RESPONDENTS DID NOT APPEAR AT THE HEARING.

4. STATED BRIEFLY, THE COMPLAINT IS THAT THE NAMED RESPONDENTS WERE EMPLOYER REPRESENTATIVES ON A COMMITTEE KNOWN AS THE GENERAL ADVISORY COMMITTEE ON INDUSTRIAL TRADES. THE TRADE UNION MOVEMENT HAD EQUAL REPRESENTATION ON THE COMMITTEE, WHICH WAS CHAIRED BY A NEUTRAL. THE COMMITTEE WAS APPARENTLY APPOINTED BY THE MINISTER OF LABOUR FOR ONTARIO TO ADVISE HIM WITH RESPECT TO, INTER ALIA, COMPULSORY CERTIFICATION OF TRADESMEN IN INDUSTRY. THE COMMITTEE WAS NOT CONCERNED WITH CERTIFICATION OF TRADE UNIONS BUT, RATHER, WITH TRADES DESIGNATED AS "CERTIFIED TRADES" UNDER THE APPRENTICESHIP AND TRADESMEN'S QUALIFICATIONS ACT, 1964. IT IS ALLEGED THAT THE COMMITTEE RECOMMENDED TO THE MINISTER THAT "THE REGULATIONS PERTAINING TO ELECTRICIANS BE AMENDED AS EXPEDITIOUSLY AS POSSIBLE TO EXCLUDE PERSONS WHO ARE PERMANENTLY EMPLOYED AT A LIMITED PURPOSE OCCUPATION IN THE ELECTRICAL TRADE IN GENERAL INDUSTRY". IT APPEARS, FURTHER, THAT AN ORDER IN COUNCIL WAS SUBSEQUENTLY PASSED CARRYING OUT THE RECOMMENDATION OF THE COMMITTEE.

5. THE COMPLAINANT, MR. SPEIRS, AND MR. MAULE ARE EMPLOYED AS ELECTRICIANS AT, RESPECTIVELY, THE FORD OAKVILLE PLANT AND THE CANADIAN

KODAK COMPANY PLANT IN TORONTO. MR. SPEIRS IS IN A BARGAINING UNIT WHOSE BARGAINING AGENT IS THE UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (HEREINAFTER REFERRED TO AS THE U.A.W.) AND MR. MAULE IS IN A BARGAINING UNIT WHOSE BARGAINING AGENT IS THE INTERNATIONAL CHEMICAL WORKERS' UNION. IT IS TO BE NOTED THAT ONE OF THE TRADE UNION MEMBERS ON THE GENERAL ADVISORY COMMITTEE WAS DOMINIC DE ANGELIS, AN INTERNATIONAL REPRESENTATIVE OF THE U.A.W.

6. BOTH THE COMPLAINANT AND MR. MAULE HAVE BEEN ACTIVELY SEEKING TO OBTAIN COMPULSORY CERTIFICATION FOR TRADESMEN EMPLOYED IN GENERAL INDUSTRY AND THEREFORE ARE OPPOSED TO THE COMMITTEE RECOMMENDATION AND THE ORDER IN COUNCIL REFERRED TO ABOVE.

7. SECTION 48 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

48. NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

8. THE COMPLAINT IN THIS CASE IS THAT THE NAMED RESPONDENTS BY THEIR CONDUCT WHEN SERVING ON THE GENERAL ADVISORY COMMITTEE PARTICIPATED IN OR INTERFERED WITH "THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION" AS THOSE WORDS ARE USED IN SECTION 48. MORE SPECIFICALLY, THE COMPLAINANT IS ALLEGING THAT HE, AN EMPLOYEE, WAS REPRESENTED ON THE GENERAL ADVISORY COMMITTEE BY THE UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, A TRADE UNION, THROUGH ITS REPRESENTATIVE, MR. DOMINIC DE ANGELIS, AND THAT THE RESPONDENTS, EMPLOYER MEMBERS ON THE COMMITTEE, PARTICIPATED IN OR INTERFERED WITH HIS REPRESENTATION BY MR. DE ANGELIS WHO, IT IS ALLEGED, WAS CHARGED WITH THE RESPONSIBILITY OF OBTAINING COMPULSORY CERTIFICATION FOR TRADES IN GENERAL INDUSTRY. IT WAS CONCEDED THAT OTHER TRADE UNION REPRESENTATIVES ON THE COMMITTEE WERE NOT SO DEALT WITH BY THE EMPLOYER MEMBERS.

9. ASSUMING THAT THE COMPLAINANT COULD ESTABLISH SUCH PARTICIPATION OR INTERFERENCE, AND WE EMPHASIZE THIS IS AN ASSUMPTION ONLY SINCE THE BOARD DID NOT HEAR ANY EVIDENCE ON THIS POINT, IT IS OUR CONSIDERED VIEW THAT THE WORDS "PARTICIPATE IN OR INTERFERE WITH...THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION" IN SECTION 48 OF THE ACT DO NOT BEAR THE MEANING WHICH MR. SPEIRS AND MR. MAULE SEEK TO GIVE THEM. HAVING REGARD TO THE GENERAL CONTEXT IN WHICH THEY APPEAR IN THE SECTION AND IN THE CONTEXT OF THE LABOUR RELATIONS ACT AS A WHOLE, WE ARE OF THE OPINION THAT THE REPRESENTATION REFERS TO REPRESENTATION OF EMPLOYEES BY A TRADE UNION AS A

BARGAINING AGENT FOR COLLECTIVE BARGAINING PURPOSES. IT IS CLEAR THAT IN WHATEVER CAPACITY MR. DE ANGELIS WAS ACTING AS A MEMBER OF THE GENERAL ADVISORY COMMITTEE, IT WAS NOT FOR THE PURPOSE OF COLLECTIVE BARGAINING ON BEHALF OF EMPLOYEES.

10. IN THE RESULT, THEN, THE BOARD CONFIRMS ITS ORIGINAL DECISION OF NOVEMBER 23, 1967 DISMISSING THE COMPLAINT.

DECISION OF THE BOARD: MARCH 25, 1968.

1. THE COMPLAINT AND THE OTHER AGGRIEVED PERSON FRANK MAULE, HAVE REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED MARCH 12, 1968. THIS IS THE THIRD REQUEST FOR RECONSIDERATION IN CONNECTION WITH THE BOARD'S INITIAL DECISION.

2. THE COMPLAINANT AND THE AGGRIEVED PERSON HAVE HAD EVERY OPPORTUNITY TO MAKE THEIR REPRESENTATIONS TO THE BOARD. THE QUESTION INVOLVED IS ONE HAVING TO DO WITH THE CONSTRUCTION OF SECTION 48 OF THE LABOUR RELATIONS ACT. THERE IS NOTHING CONTAINED IN THIS THIRD REQUEST WHICH IN OUR VIEW MAKES IT ADVISABLE FOR THE BOARD TO RECONSIDER ITS DECISION DATED MARCH 12, 1968 AND, ACCORDINGLY, THE REQUEST IS DENIED.

3. THE REGISTRAR IS DIRECTED TO FORWARD TO THE COMPLAINANT WITH THIS DECISION A PAMPHLET COPY OF THE LABOUR RELATIONS ACT PRESENTLY USED BY THE BOARD.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 79A

13991-67-M: THE EAST YORK CIVIC FOREMEN'S UNION No. 820 (TRADE UNION) V BOROUGH OF EAST YORK (FORMERLY THE CORPORATION OF THE TOWNSHIP OF EAST YORK) (EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: T. ARMSTRONG AND C. F. KITCHEN FOR THE TRADE UNION, AND C. JOHN CANNON, Q.C., FOR THE EMPLOYER.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER
H. F. IRWIN: MARCH 8, 1968.

1. THE TRADE UNION HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF FEBRUARY 7TH, 1968.

2. THE DECISION OF THE BOARD, REFERRED TO ABOVE, IS AN INTERIM DECISION DIRECTING AN EXAMINER TO OBTAIN CERTAIN FACTS DEEMED BY THE BOARD TO BE NECESSARY IN ORDER TO ENABLE IT TO PROPERLY ANSWER THE QUESTION PUT TO IT BY THE MINISTER. IT DOES NOT PURPORT TO BE A FINAL

DECISION WITH RESPECT TO ANY OF THE MATTERS RAISED OR SUBMISSIONS MADE AT THE HEARING, ALL OF WHICH, HOWEVER, MAY VERY WELL BE AFFECTED BY THE INFORMATION OBTAINED BY THE EXAMINER.

3. IN PARAGRAPH 5 OF ITS REQUEST FOR REVIEW THE TRADE UNION SUBMITS THAT THE STATEMENT OF THE BOARD IN PARAGRAPH 16 OF ITS DECISION, TO THE EFFECT THAT "IT IS COMMON GROUND THAT THE QUESTION PUT BY THE MINISTER INVOLVES AN ISSUE UNDER SUBSECTION 10 OF SECTION 47A....", IS AN ERROR ON A FUNDAMENTAL ISSUE AND IGNORES THE TRADE UNION'S MAIN ARGUMENT.

4. THE USE OF THE WORDS "COMMON GROUND" HAS REFERENCE TO THE UNEQUIVOCAL ADMISSION OF THE PARTIES AT THE HEARING THAT (TO ADOPT, WITH MODIFICATIONS, THE PHRASEOLOGY OF SUBSECTION 10) TWO MUNICIPALITIES WERE ERECTED INTO ANOTHER MUNICIPALITY OR WERE AMALGAMATED, UNITED, OR OTHERWISE JOINTED TOGETHER, AND THAT THERE WERE EMPLOYEES OF SIMILAR STATUS IN EACH OF THE ORIGINAL MUNICIPALITIES CAPABLE OF BEING INTERMINGLED. INDEED, IN PARAGRAPH 1 OF ITS REQUEST FOR REVIEW THE TRADE UNION ITSELF, IN THE COURSE OF REITERATING THE ARGUMENT IT ADVANCED AT THE HEARING, STATES: "WHILE IT IS TRUE THAT EVENTS WITHIN THE AMBIT OF SECTION 47A(10) OCCURRED ON JANUARY 1, 1967, ... CERTAIN INTERVENING EVENTS (ETC.)."

5. THE FACTS BEING SUCH, AND SINCE THE QUESTION PUT BY THE MINISTER INDISPUTABLY REFERS TO SECTION 47A, THE INESCAPABLE CONCLUSION IS THAT, IN THE WORDS OF SECTION 79A(2), "SUCH QUESTION INVOLVES AN ISSUE UNDER SUBSECTION 10 OF SECTION 47A". "SUCH QUESTION" IS OBVIOUSLY THE QUESTION PUT BY THE MINISTER.

6. THE TRADE UNION'S "MAIN ARGUMENT" HAS NOT BEEN DEALT WITH IN THE INTERIM DECISION BUT WILL BE CONSIDERED BY THE BOARD IN ITS FINAL AWARD.

7. THE REQUEST OF THE TRADE UNION IS DENIED.

DECISION OF BOARD MEMBER O. HODGES: MARCH 8, 1968.

WITHOUT DEROGATING FROM MY OPINION THAT THE BOARD WAS IN ERROR IN ITS DECISION OF FEBRUARY 7TH, 1968, I CONCUR WITH THE MAJORITY DECISION WHEREIN THE TRADE UNION'S REQUEST FOR RECONSIDERATION IS DENIED.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

14314-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) v. THE MITCHELL CONSTRUCTION COMPANY (CANADA) (RESPONDENT).

6. THE RESPONDENT STATES IN ITS REPLY THAT IT DOES NOT CONSIDER THAT TWO EMPLOYEES CONSTITUTES A BARGAINING UNIT. SECTION 6(1) OF THE

ACT PROVIDES THAT EVERY UNIT SHALL CONSIST OF MORE THAN ONE EMPLOYEE. THE BOARD HAS FOUND THAT ANY NUMBER OF EMPLOYEES ABOVE ONE MAY CONSTITUTE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING. THE RESPONDENT FURTHER SUBMITS THAT A UNIT OF TWO EMPLOYEES IS NOT APPROPRIATE IN VIEW OF THE FACT THAT IT WILL ONLY BE WORKING IN THE AREA FOR SIX MONTHS ON THE JOB AFFECTED BY THIS APPLICATION. THE DURATION OF THE PROJECT HAS NOT BEEN HELD BY THE BOARD TO BE A GROUND FOR REFUSING TO ISSUE A CERTIFICATE. PROVIDED THAT THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION WERE EMPLOYED ON THE JOB SITE AS OF THE DATE OF THE MAKING OF THE APPLICATION AND THE APPLICANT HAS MET ALL OF THE BOARD'S OTHER REQUIREMENTS, THE APPLICANT IS ENTITLED TO CERTIFICATION. FOR THE ABOVE REASONS, THE BOARD IS OF THE OPINION THAT NO USEFUL PURPOSE WOULD BE SERVED BY SETTING THIS MATTER DOWN FOR HEARING. ACCORDINGLY, THE REQUEST OF THE RESPONDENT IS DENIED.

STATISTICAL TABLES FOR MARCH 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	MARCH 1968	1ST 12 MONTHS OF FISCAL YEAR 1967-68	1966-67
I. CERTIFICATION	103	942	938
II. DECLARATION TERMINATING BARGAINING RIGHTS	6	90	40
III. DECLARATION OF SUCCESSOR STATUS	3	27	14
IV. DECLARATION THAT STRIKE UNLAWFUL	3	37	30
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	13	1
VI. CONSENT TO PROSECUTE	14	104	88
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	27	188	144
VIII. MISCELLANEOUS	<u>8</u>	<u>75</u>	<u>63</u>
TOTAL	<u>164</u>	<u>1476</u>	<u>1318</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	MARCH 1968	1ST 12 MONTHS OF FISCAL YEAR 1967-68	1966-67
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	83	880	955

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR
RELATIONS BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	MARCH 1968	1ST 12 MONTHS OF FISCAL YEAR 1967-68	1966-67
I. CERTIFICATION	67	920	949
II. DECLARATION TERMINATING BARGAINING RIGHTS	5	91	38
III. DECLARATION OF SUCCESSOR STATUS	7	22	13
IV. DECLARATION THAT STRIKE UNLAWFUL	2	34	29
V. DECLARATION THAT LOCK- OUT UNLAWFUL	1	13	1
VI. CONSENT TO PROSECUTE	4	95	84
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	17	175	137
VIII. MISCELLANEOUS	<u>4</u>	<u>71</u>	<u>70</u>
TOTAL	<u>107</u>	<u>1421</u>	<u>1321</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>MARCH 1968</u>	<u>1ST 12 MONTHS 1967-68</u>	<u>FISCAL YR. 1966-67</u>	<u>MARCH 1968</u>	<u>1ST 12 MONTHS 1967-68</u>	<u>FISCAL YR. 1966-67</u>
<u>CERTIFICATION</u>						
GRANTED	45	642	705	816	25953	4965
DISMISSED	15	202	159	542	11339	12308
WITHDRAWN	7	76	85	35	1698	1450
TOTAL	<u>67</u>	<u>920</u>	<u>949</u>	<u>1393</u>	<u>38990</u>	<u>18723</u>
<u>TERMINATION OF BARGAINING RIGHTS</u>						
GRANTED	3	42	25	33	1081	832
DISMISSED	2	46	12	25	1033	297
WITHDRAWN	-	3	1	-	53	203
TOTAL	<u>5</u>	<u>91</u>	<u>38</u>	<u>58</u>	<u>2167</u>	<u>1332</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
	MARCH	1ST 12 MTHS OF FISCAL YR.		
	1968	1967-68	1966-67	
III. <u>DECLARATION THAT STRIKE</u>				
	<u>UNLAWFUL</u>			
GRANTED	-	3	6	
DISMISSED	-	3	2	
WITHDRAWN	<u>2</u>	<u>28</u>	<u>21</u>	
TOTAL	<u>2</u>	<u>34</u>	<u>29</u>	
IV. <u>DECLARATION THAT LOCKOUT</u>				
	<u>UNLAWFUL</u>			
GRANTED	1	1	-	
DISMISSED	-	1	-	
WITHDRAWN	<u>-</u>	<u>11</u>	<u>1</u>	
TOTAL	<u>1</u>	<u>13</u>	<u>1</u>	
V. <u>CONSENT TO PROSECUTE</u>				
GRANTED	1	7	16	
DISMISSED	-	12	15	
WITHDRAWN	<u>3</u>	<u>76</u>	<u>51</u>	
TOTAL	<u>4</u>	<u>95</u>	<u>82</u>	

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MARCH 1968	1ST 12 MTHS 1967-68	FISCAL YR. 1966-67
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	20	21
POST-HEARING VOTE	3	46	39
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	1	13	10
POST-HEARING VOTE	2	38	53
BALLOTS NOT COUNTED	-	3	-
TOTAL	<u>6</u>	<u>120</u>	<u>123</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MARCH 1968	1ST 12 MTHS 1967-68	FISCAL YR. 1966-67
*RESPONDENT UNION SUCCESSFUL	-	1	4
RESPONDENT UNION UNSUCCESSFUL	<u>2</u>	<u>21</u>	<u>19</u>
TOTAL	<u>2</u>	<u>22</u>	<u>23</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.



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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING APRIL 1968

BARGAINING AGENTS CERTIFIED DURING APRIL

NO VOTE CONDUCTED

13456-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. KING OPTICAL COMPANY (RESPONDENT) V. CANADIAN OPTICAL WORKERS' UNION 202 - N.C.C.L. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(23 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 27).

14054-67-R: COMMUNICATIONS WORKERS OF AMERICA (AFL-CIO-CLC) (APPLICANT) V. AMPLITROL ELECTRONICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 29).

14082-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. D. & E. PLASTERING LTD. (RESPONDENT) V. LOCAL 117, O.P. C.M.I.A. (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 31).

14151-67-R: TORONTO NEWSPAPER GUILD, LOCAL 87 OF THE AMERICAN NEWSPAPER GUILD (APPLICANT) V. PETERBOROUGH EXAMINER COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS EDITORIAL DEPARTMENT, SAVE AND EXCEPT THE EXECUTIVE EDITOR, NEWS EDITOR, CITY EDITOR, SENIOR EDITORIAL WRITER, ONE SECRETARY TO THE EXECUTIVE EDITOR AND ONE SECRETARY TO THE NEWS EDITOR AND EDITORIAL WRITER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE EDITORIAL WRITER AND BUREAU REPORTERS ARE INCLUDED IN THE BARGAINING UNIT.

14212-67-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CON-BRIDGE LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

AFTER CAREFULLY CONSIDERING THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF THE PARTIES MADE IN CONNECTION THEREWITH, WE HAVE COME TO THE CONCLUSION THAT THE APPROPRIATE BARGAINING UNIT IN THIS MATTER IS ONE CONSISTING OF CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS.

14246-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506, (APPLICANT) V. MAREL CONTRACTORS (RESPONDENT) V. OPERATIVE PLASTERERS' & CEMENT MASONS' INT. ASSOC. LOCAL 506 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 43).

14248-67-R: PETERBORO TYPOGRAPHICAL UNION LOCAL 248, (I.T.U.) (APPLICANT) V. PETERBOROUGH EXAMINER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL PROOFREADERS IN THE EMPLOY OF THE RESPONDENT AT PETERBOROUGH."
(3 EMPLOYEES IN THE UNIT).

14259-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V.
EASTWOOD FOOD SERVICES LIMITED (RESPONDENT).

UNIT #1: "ALL DRIVER SALESMEN OF THE RESPONDENT EMPLOYED AT OR WORKING
OUT OF THE CITY OF WATERLOO, SAVE AND EXCEPT SUPERVISORS PERSONS ABOVE
THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24
HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(9 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT
DRIVER SALESMEN, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR,
PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND
STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN
THE UNIT).

UNIT #3: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO REGULARLY EMPLOYED
FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS AND
PERSONS ABOVE THE RANK OF SUPERVISOR." (2 EMPLOYEES IN THE UNIT).

14275-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. NEW
WAY LAMINATES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT CREDIT, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF,
STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULAR-
LY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (48 EMPLOYEES IN THE
UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE PERSON
CLASSIFIED BY THE RESPONDENT AS SHIPPER IS A FOREMAN AND IS EXCLUDED
FROM THE BARGAINING UNIT.

14294-67-R: THE CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL
WORKERS (APPLICANT) V. COLLARD BROTHERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN
TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN,
OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS
PER WEEK." (81 EMPLOYEES IN THE UNIT).

14296-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CLIO:CLC
(APPLICANT) V. BLAHEY'S (ELLIOT LAKE) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ELLIOT LAKE, SAVE AND EXCEPT
STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, AND OFFICE STAFF."
(49 EMPLOYEES IN THE UNIT).

14302-67-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L. - C.I.O., C.L.C. (APPLICANT) V. COLLINGWOOD SHIPYARDS DIVISION OF CANADIAN SHIPBUILDING AND ENGINEERING LIMITED (RESPONDENT).

UNIT: "ALL DRAFTSMEN AND APPRENTICE DRAFTSMEN IN THE EMPLOY OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (27 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SECTION LEADERS ARE INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 49).

14315-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. TRAVELAIRE TRAILER MANUFACTURING LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (23 EMPLOYEES IN THE UNIT).

14319-67-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL 647 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS VENDING DIVISION AT OR WORKING OUT OF WATERLOO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (21 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14320-67-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. VAGDENMILLS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES) (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, HOMEWORKERS AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (95 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS AND AGREEMENTS OF THE PARTIES).

14321-67-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MANUFACTURING PLANT AT OWEN SOUND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY." (176 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 50).

14322-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. BERTRAND BROS. OPERATING UNDER THE FIRM NAME AS SUDBURY WHOLESALE (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

14326-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. FRIENDLY ACRES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF LOBO, SAVE AND EXCEPT REGISTERED NURSES, GRADUATE NURSES, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

14327-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. W.D. LAFLAMME GENERAL CONTRACTOR LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14331-67-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. EILTAN DYERS & BLEACHERS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (30 EMPLOYEES IN THE UNIT).

14334-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. PRIMO TITTON CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14339-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS UNION LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MESSENGER DELIVERY SERVICE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT FOREMEN AND DISPATCHERS, PERSONS ABOVE THE RANKS OF FOREMAN AND DISPATCHER, AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

14344-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GOODYEAR SERVICE STORE, A DIVISION OF GOODYEAR TIRE AND RUBBER COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT SERVICE MANAGER, PERSONS ABOVE THE RANK OF SERVICE MANAGER, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

14350-67-R: EMPLOYEES' ASSOCIATION OF KEMP PRODUCTS (1966) (APPLICANT) V. KEMP PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES EMPLOYED BY THE RESPONDENT AT 1910 HURON STREET, LONDON, ONTARIO SAVE AND EXCEPT CREW LEADERS, PERSONS ABOVE THE RANK OF CREW LEADER, OFFICE AND SALES STAFF." (28 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE EMPLOYEE ENGAGED IN QUALITY CONTROL IS PART OF THE OFFICE STAFF AND AS SUCH IS EXCLUDED FROM THE BARGAINING UNIT.

14351-67-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. BEVERAGE CANNERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (40 EMPLOYEES IN THE UNIT).

14352-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 1036 (APPLICANT) V. R. J. CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN TOWNSHIP 150 AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

14353-67-R: THE HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 299, TORONTO, OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION - A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. BRAMFIELD RESTAURANTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS BOILER ROOM RESTAURANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE MANAGER AND THE EXECUTIVE CHEF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (22 EMPLOYEES IN THE UNIT).

14354-67-R: WAREHOUSEMEN & MISCELLANEOUS DRIVERS LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ASSOCIATED FREEZERS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (35 EMPLOYEES IN THE UNIT).

14358-67-R: UNITED CLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. DOMTAR CONSTRUCTION MATERIALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDE T EMPLOYED IN ITS CLAY PRODUCTS DIVISION AT ITS COOKSVILLE PLANTS IN MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, LABORATORY PERSONNEL, SALES AND ENGINEERING STAFF." (241 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14359-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CANADIAN MONORAIL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

14360-67-R: NURSES' ASSOCIATION OSHAWA HEALTH DEPARTMENT (APPLICANT) V. THE CORPORATION OF THE CITY OF OSHAWA (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT, SAVE AND EXCEPT THE SUPERVISOR OF NURSING AND PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSING." (16 EMPLOYEES IN THE UNIT).

14361-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT NEW LISKEARD, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

14365-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL - CIO - CLC (APPLICANT) V. AMHERSTBURG DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (12 EMPLOYEES IN THE UNIT).

14366-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THOROLD AND DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (16 EMPLOYEES IN THE UNIT).

14367-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. MARENTETTE BROS. LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14377-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. MELDON CONSTRUCTION (NORTH BAY) LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF DYMOND, BUCKE AND COLEMAN AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, AND THE TOWNSHIP OF SOUTH LORRAIN IN THE DISTRICT OF TIMISKAMING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (25 EMPLOYEES IN THE UNIT).

14382-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. PEACOCK CONTRACTING LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14383-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. BONA VISTA RESTAURANT DINING ROOM AND BANQUET ROOMS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT OWNER-MANAGERS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

14384-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC. (APPLICANT) V. GOLDEN TRIANGLE CO-OPERATIVE, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

14386-67-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. H. J. O'CONNELL LTD. (RESPONDENT) V. GROUP OF EMPLOYEES).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

14391-68-R: LOCAL UNION #636-THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, OFL,CIO,CLC,AFL (APPLICANT) V. INTERCOM SALES & INSTALLATIONS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF HAMILTON, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

14394-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. CORVETTE FORMS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

14395-68-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 607 (APPLICANT) V. W. A. McDougall Limited (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WORKING AT OR OUT OF KAPUSKASING SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER." (3 EMPLOYEES IN THE UNIT).

14398-68-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT) V. UBA CHEMICAL INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

14409-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. STEEL MASTER TOOL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (30 EMPLOYEES IN THE UNIT).

14416-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. M.P. LUNDY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

14420-68-R: RETAIL AND FOOD EMPLOYEES' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL, CIO, CLC (APPLICANT) V. POWER SUPER MARKETS LIMITED (RESPONDENT) V. UNITED PACKINGHOUSE FOOD & ALLIED WORKERS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES IN THE PROVINCE OF ONTARIO REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF-SCHOOL HOURS AND DURING SCHOOL VACATION PERIODS, SAVE AND EXCEPT PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS." (473 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14422-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC, (APPLICANT) V. NATIONAL GROCERS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GORE BAY, SAVE AND EXCEPT OFFICE MANAGER, PERSONS ABOVE THE RANK OF OFFICE MANAGER, BUYER, AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

14431-68-R: GENERAL TRUCK DRIVERS UNION LOCAL 938 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DRISCOLL'S CARTAGE AND MOVERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE AND SALES STAFF." (21 EMPLOYEES IN THE UNIT).

14435-68-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. VICTORIA READY MIXED CONCRETE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LINDSAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

14436-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. J. R. LEDUC LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14441-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #2307 (APPLICANT) V. SECANT CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

14443-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) V. REFFLINGHAUS CONSTRUCTION CO. LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE
RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE
AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE
RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14444-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837
(APPLICANT) V. STANDARD PAVING (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN
THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE
TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING
FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(26 EMPLOYEES IN THE UNIT).

14446-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) V. CONCRETE COLUMN CLAMPS (1961) LTD. (RESPONDENT) V.
INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER) V.
OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION LOCAL
UNION NO. 124 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION
LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW,
SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORK-
ING FOREMAN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT DATED
JUNE 9TH, 1965, BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF
OPERATING ENGINEERS, LOCAL 793 AND PERSONS COVERED BY A SUBSISTING
COLLECTIVE AGREEMENT DATED JULY 31ST, 1967, BETWEEN THE RESPONDENT AND
THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION
LOCAL UNION NO. 124." (10 EMPLOYEES IN THE UNIT).

14477-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
(APPLICANT) V. T. & D. CONTRACTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN
A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE
TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS
OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE
STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD,
RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY
LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF
YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK
OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING
PROJECTS." (15 EMPLOYEES IN THE UNIT).

14478-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) V. GILBERT STEEL LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

14479-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION 721 (APPLICANT) V. CUSTODIS CHIMNEYS (CANADIAN CHIMNEY COMPANY) (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN OSHAWA, AND IN THE TOWNSHIPS OF BROCK, REACH (INCLUDING SCUGOG), WHITBY, EAST WHITBY, SCOTT, UXBRIDGE AND PICKERING IN THE COUNTY OF ONTARIO, AND THE TOWNSHIPS OF CARTWRIGHT, MANVERS, DARLINGTON AND CLARKE IN THE COUNTY OF DURHAM, BUT EXCEPTING THEREFROM THOSE PORTIONS OF THE COUNTY OF ONTARIO WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

14133-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. THE COUNCIL OF NORTHERN ELECTRIC ENGINEERING TECHNICIANS, TORONTO WORKS (INTERVENER #1) V. THE ONTARIO COUNCIL OF NORTHERN ELECTRIC ENGINEERS AND ASSOCIATES (INTERVENER #2).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS MANUFACTURING DIVISION IN THE COUNTY OF PEEL, SAVE AND EXCEPT SECTION CHIEFS, PERSONS ABOVE THE RANK OF SECTION CHIEF, ENGINEERS, MEMBERS OF THE PERSONNEL DEPARTMENT, NURSES, ONE SECRETARY TO THE WORKS MANAGER, AND ONE SECRETARY TO EACH PERSON REPORTING DIRECTLY TO THE WORKS MANAGER." (794 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS
BALLOTS SEGREGATED AND NOT COUNTED

8

716

754

NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	509
NUMBER OF BALLOTS MARKED IN FAVOUR OF NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION	199

(APPLICANT CERTIFIED).

(INTERVENER #1 DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 32).

14239-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. JOHNSON MATTHEY & MALLORY LIMITED (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM OF ITS PLANTS IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1

14357-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. BEEF TERMINAL LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT IN ITS BOILER AND ENGINE ROOM AT METROPOLITAN TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

13678-67-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CANADA SAND PAPERS LIMITED (RESPONDENT) V. INTERNATIONAL CHEMICAL WORKERS UNION A.F.L.-C.I.O. - C.L.C., ON BEHALF OF ITS LOCAL 652 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS REGULARLY EMPLOYED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS STEAM PLANT AT ITS PLANT IN PLATTSVILLE, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK ABOVE THE RANK OF CHIEF ENGINEER." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	5	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	0	

13935-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ST. JOSEPH'S HOSPITAL (RESPONDENT).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT TORONTO, ONTARIO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF ENGINEER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS, AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS." (764 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		631
NUMBER OF PERSONS WHO CAST BALLOTS	593	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	368	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	223	

14077-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. BRO-DART OF CANADA, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, SALES AND GENERAL OFFICE STAFF." (23 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		26
NUMBER OF PERSONS WHO CAST BALLOTS	26	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	14	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	12	

14120-67-R: INTERNATIONAL BROTHERHOOD OF BOOKBINDERS AND BINDERY WOMEN, LOCAL #226 (APPLICANT) V. HUNTER PRINTING LONDON LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BINDERY OPERATIONS AT LONDON, ONTARIO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON		
VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	3	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	0	

14188-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC (APPLICANT) V. DUTCH BOY FOOD MARKET LIMITED (RESPONDENT) V. FOOD HANDLERS' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA (INTERVENER #1) V. LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #2) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED IN OFF SCHOOL HOURS AND DURING THE SCHOOL VACATION PERIOD." (29 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		29
NUMBER OF PERSONS WHO CAST BALLOTS	29	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	15	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	14	

14379-67-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NADECO LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON		
VOTERS' LIST		2
NUMBER OF PERSONS WHO CAST BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING APRIL

NO VOTE CONDUCTED

14231-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721, 61 PRINCESS STREET, PETERBOROUGH, ONTARIO (APPLICANT) V. ENNIS STEEL, DIVISION OF WELLAND IRON & METAL LIMITED, 2 BROADWAY AVENUE, P. O. BOX 516, WELLAND ONTARIO (RESPONDENT). (2 EMPLOYEES).

14247-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DEERFIELD CONSTRUCTION LIMITED (RESPONDENT). (7 EMPLOYEES).

14251-67-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. KEENE CONSTRUCTION COMPANY LIMITED (RESPONDENT). (NO EMPLOYEES).

14266-67-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DUTCH LAUNDRY AND DRY CLEANERS LTD. (RESPONDENT). (16 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 45).

14274-67-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. BAYCREST CENTRE FOR GERIATRIC CARE (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (INTERVENER). (4 EMPLOYEES).

14323-67-R: NURSES' ASSOCIATION HOTEL DIEU OF ST. JOSEPH SCHOOL OF NURSING (APPLICANT) V. RELIGIOUS HOSPITALLERS OF ST. JOSEPH'S HOTEL DIEU (RESPONDENT). (17 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 52).

14333-67-R: THE BRICKLAYERS MASON'S AND PLASTERERS INTERNATIONAL UNION OF AMERICA LOCAL #10 (APPLICANT) V. S. & G. MASONRY (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURG IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14389-67-R: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. J. D. CARRIER SHOE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (41 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 54).

14434-68-R: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. PERMANENT TRANSIT-MIX CONCRETE LTD. (RESPONDENT). (6 EMPLOYEES).

14335-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (APPLICANT) V. GINGERS LIMITED (RESPONDENT). (3 EMPLOYEES).

14340-67-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. KOKOTOW LUMBER LIMITED (RESPONDENT). (9 EMPLOYEES).

14368-67-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. T. & D. CONTRACTING CO. LTD. (RESPONDENT). (16 EMPLOYEES).

14371-67-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HARVEY LLOYD JAMES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (9 EMPLOYEES).

14410-68-R: WELLAND FORGE SHOP ASSOCIATION (APPLICANT) V. WELLAND FORGE LIMITED (RESPONDENT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER). (42 EMPLOYEES).

14423-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. T. & D. CONTRACTING COMPANY LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (20 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 58).

14424-68-R: WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION, LOCAL 551 A.F.L. - CIO (APPLICANT) V. PRESTIGE DRY WALL LTD. (RESPONDENT). (16 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 59).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13760-67-R: UNITED SHOE WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT)
V. GREB INDUSTRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS SERVICES PLANT IN
KITCHENER, SAVE AND EXCEPT ASSISTANT FORELADIES, ASSISTANT FOREMEN,
PERSONS ABOVE THE RANK OF ASSISTANT FORELADY, AND ASSISTANT FOREMAN,
OFFICE AND SALES STAFF, EMPLOYEES IN THE ENGINEERING DEPARTMENT,
PRODUCTION AND QUALITY CONTROL PERSONNEL, PERSONS REGULARLY EMPLOYED
FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIODS." (32 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		32
NUMBER OF PERSONS WHO CAST BALLOTS		32
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	21	

14143-67-R: INTERNATIONAL UNION OF DISTRICT 50, U.M.W.A. (APPLICANT)
V. SCHENECTADY CHEMICALS CANADA LIMITED (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE
AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES
STAFF." (19 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		19
NUMBER OF PERSONS WHO CAST BALLOTS		21
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	8	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	11	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING APRIL

14378-67-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS, LOCAL 721, 61 PRINCESS STREET, PETERBOROUGH,
ONTARIO (APPLICANT) V. GILBERT STEEL LIMITED, BRITANNIA RD & DIXIE
ROAD, MALTON, ONTARIO (RESPONDENT). (2 EMPLOYEES).

14385-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL UNION 1758 (APPLICANT) V. ZELLER'S LIMITED (RESPONDENT).
(2 EMPLOYEES).

14390-67-R: LOCAL UNION 2679, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. GEORGETOWN STORE FURNITURE CO. (RESPONDENT). (7 EMPLOYEES).

14407-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. NATIONAL BORING AND SOUNDING INCORPORATED (RESPONDENT). (10 EMPLOYEES).

14408-68-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. SCARBOROUGH CENTENARY HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER). (160 EMPLOYEES).

14412-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. COLT PRESS AUTOMATION CO. LTD. (RESPONDENT). (1 EMPLOYEE).

14442-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. CORVETTE FORMS LIMITED (RESPONDENT). (8 EMPLOYEES).

14445-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GEORGE & ASMUSSEN LIMITED (RESPONDENT). (4 EMPLOYEES).

14450-68-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL - CIO - CLC, WINDSOR, ONTARIO (APPLICANT) V. BOARD OF TRUSTEES OF THE HARROW PUBLIC SCHOOLS, HARROW, ONTARIO (RESPONDENT). (4 EMPLOYEES).

14455-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. TWENTY-SEVEN CARTAGE LTD. (RESPONDENT). (11 EMPLOYEES).

14458-68-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ROBERVAL EXPRESS LIMITED (RESPONDENT) V. LE SYNDICAT NATIONAL DES EMPLOYES DE L'INDUSTRIE DU CAMIONNAGE, SAGUENAY, LAC ST-JEAN (INTERVENER). (10 EMPLOYEES).

14460-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. CATKEY CONSTRUCTION LIMITED (RESPONDENT). (8 EMPLOYEES).

14486-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. POLLOCK-Mc GIBBON LIMITED (RESPONDENT). (4 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING APRIL

13864-67-R: FRANCOIS CYR (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (RESPONDENT) V. UNI-FORM BUILDERS LTD. (EMPLOYER). (DISMISSED).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF UNI-FORM BUILDERS LTD. IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP) RUSSELL AND PRESCOTT SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (20 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	12

BALLOT BOX SEALED PER BOARD'S DECISION DATED NOVEMBER 29TH, 1967.

(SEE INDEXED ENDORSEMENT PAGE 60).

13883-67-R: VINCENT CARLESIMO (APPLICANT) V. INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, AFL-CIO-CLC (RESPONDENT) V. ACME DIVISION POLYGON SERVICES LIMITED (EMPLOYER). (GRANTED).

UNIT: "ALL EMPLOYEES OF ACME DIVISION POLYGON SERVICES LIMITED IN METROPOLITAN TORONTO, SAVE AND EXCEPT GUARDS, WATCHMAN, OFFICE AND TECHNICAL AND SALES STAFF AND PERSONS COVERED BY A COLLECTIVE AGREEMENT WHICH WAS IN EFFECT BETWEEN INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, AFL-CIO-CLC AND ACME DIVISION POLYGON SERVICES LIMITED." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	11
NUMBER OF PERSONS WHO CAST BALLOTS	11
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	11

14288-67-R: QUIRINO LATTAVO 28 BRIDESBURG DR. WESTON ONT. (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENT) V. STORRAR LTD. (EMPLOYER). (GRANTED).

UNIT: "ALL EMPLOYEES OF STORRAR LTD. AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	16

14329-67-R: LAWRENCE BRENNAN (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1988 (RESPONDENT) V. HOWARD S. CLARK CONSTRUCTION (INTERVENER). (1 EMPLOYEE). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 62).

14381-67-R: MURRAY COOPER (APPLICANT) V. THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, U.A.W. C.I.O., LOCAL 397 (RESPONDENT). (12 EMPLOYEES). (GRANTED).

(RE: CANADIAN CYLINDER COMPANY LIMITED).

14429-68-R: ANGUS GIBSON, EMPLOYEE, AND CERTAIN OTHER EMPLOYEES COVERED BY COLLECTIVE AGREEMENT, JOINTLY AND SEVERALLY (APPLICANTS) V. UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS, AFL-CIO-CLC (RESPONDENT). (62 EMPLOYEES). (GRANTED).

(RE: ERIE SHOE COMPANY LIMITED).

14438-68-R: THE EMPLOYEES OF THE SURVEY SECTION, OF THE ENGINEERING DEPARTMENT, OF THE BOROUGH OF ETOBICOKE (APPLICANT) V. THE BOROUGH OF ETOBICOKE CIVIC EMPLOYEES' LOCAL UNION No. 185, CHARTERED WITH THE CANADIAN UNION OF PUBLIC EMPLOYEES, AND AFFILIATED WITH THE CANADIAN LABOUR CONGRESS (RESPONDENT). (19 EMPLOYEES). (WITHDRAWN).

(RE: THE CORPORATION OF THE BOROUGH OF ETOBICOKE).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

APRIL

14137-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KIDD COPPER MINES LIMITED (RESPONDENT) V. THE INTERNATIONAL UNION OF MINE, MILL & SMELTER WORKERS (CANADA) (PREDECESSOR TRADE UNION). (GRANTED).

14198-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. TRAVELADE MOTORS LIMITED (RESPONDENT) V. SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644, C.L.C. (PREDECESSOR TRADE UNION) V. GROUP OF EMPLOYEES (OBJECTORS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 63).

14325-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. PETER BREDIN LTD. (RESPONDENT) V. SAULT STE. MARIE GENERAL WORKERS UNION, LOCAL 1644, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

14380-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CANADA CATERING CO. LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF ELECTRICAL, RADIO & MACHINE WORKERS' AFL:CIO:CLC. (PREDECESSOR TRADE UNION). (GRANTED).

14417-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. SUDBURY MOTORS LIMITED (RESPONDENT) V. SUDBURY GENERAL WORKERS UNION LOCAL 101, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

14418-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. MEREDITH-CONNELLY MOTORS COMPANY LIMITED (RESPONDENT) V. SUDBURY GENERAL WORKERS UNION LOCAL 101, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

14419-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. PAWSON'S (SUDBURY) LIMITED (RESPONDENT) V. SUDBURY GENERAL WORKERS UNION LOCAL 101, C.L.C. (PREDECESSOR TRADE UNION). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

APRIL

14397-68-U: INSULATION CONTRACTORS CORPORATION OF EASTERN ONTARIO, APPLIED INSULATION CO. LTD., FEDERAL INSULATION AND KOVACH INSULATIONS (APPLICANTS) V. JEAN LOUIS ALLARD, ET AL (RESPONDENTS). (WITHDRAWN).

14430-68-U: COPELAND REFRIGERATION OF CANADA, LIMITED (APPLICANT) V. D. G. THOMPSON, R. G. BELL, R. C. FRASER, A. WHITE, R. ROBBINS, W. SYPKO, B. LAHEY, J. J. MARCO, W. M. MCPHEE, C. M. FLETCHER, L. J. PAPPLE, B. E. HAWTHORN, L. S. HAYDEN, W. SEMIWOLOS, J. B. MCKERNAN, AND D. C. GOODBRAND (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING APRIL

14172-67-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. ST. MARY'S OF THE LAKE HOSPITAL (RESPONDENT). (WITHDRAWN).

14219-67-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. WELPORT INVESTMENTS LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 64).

14260-67-U: NORTH YORK TOWNSHIP CIVIC EMPLOYEES UNION, No. 94
(APPLICANT) V. THE CORPORATION OF THE BOROUGH OF NORTH YORK
(RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 65).

14290-67-U: THE CORPORATION OF THE BOROUGH OF NORTH YORK (APPLICANT)
V. THE NORTH YORK TOWNSHIP CIVIC EMPLOYEES' UNION, LOCAL 94
(RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 66).

14291-67-U: THE CORPORATION OF THE BOROUGH OF NORTH YORK (APPLICANT)
V. LOCAL UNION 373 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES (NORTH
YORK BOROUGH MUNICIPAL EMPLOYEES) (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 74).

14304-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V.
RUBBERMAID (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

14305-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V.
RUBBERMAID (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

14324-67-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
506 (APPLICANT) V. D. & E. PLASTERING LTD. (RESPONDENT). (WITHDRAWN).

14337-67-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506
(APPLICANT) V. ONTARIO PLASTERING CONTRACTORS AND SERGIO BARTOZZI
(RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 75).

14338-67-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506
(APPLICANT) V. MAREL CONTRACTORS AND MARCO MUZZO (RESPONDENT).
(GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 77).

14348-67-U: CANADIAN ENGINEERING AND CONTRACTING CO. LIMITED (APPLICANT)
V. LOCAL UNION 18, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA (RESPONDENT). (WITHDRAWN).

14349-67-U: CANADIAN ENGINEERING AND CONTRACTING CO. LIMITED (APPLICANT)
V. THOMAS FENWICK (RESPONDENT). (WITHDRAWN).

FINANCIAL STATEMENT

14376-67-M: MAURICE BROSNAN, EXECUTIVE OFFICER, LOCAL 43 C.U.P.E.
(COMPLAINANT) V. WILLIAM OVERKOTT, PRESIDENT LOCAL 43 C.U.P.E.
(RESPONDENT). (WITHDRAWN).

14406-68-M: JAMES MUNRO (COMPLAINANT) V. LOCAL 736, INTERNATIONAL IRON-
WORKERS ASSOC. OF BRIDGE & STRUCTURAL & ORNAMENTAL (RESPONDENT).
(DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 78).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

APRIL

14030-67-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V. ST.
MARY'S OF THE LAKE HOSPITAL (RESPONDENT). (DISMISSED).

14038-67-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. &
CANADA (COMPLAINANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED
(RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 78).

14089-67-U: LOCAL UNION 633, AMALGAMATED MEAT CUTTERS AND BUTCHER
WORKMEN OF NORTH AMERICA, A.F.L. C.I.O. C.L.C. (COMPLAINANT) V.
HENRY ALPHONSE DUQUETTE, (I.G.A. FOODLINER, TILBURY) (RESPONDENT).
(DISMISSED).

14094-67-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC
(COMPLAINANT) V. PARK HOUSE (RESPONDENT). (DISMISSED).

14176-67-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION -
LOCAL 261 (COMPLAINANT) V. THE TALISMAN MOTOR INN (RESPONDENT).

- AND -

14189-67-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION -
LOCAL 261 (COMPLAINANT) V. THE TALISMAN MOTOR INN (RESPONDENT).
(DISMISSED).

(THE ABOVE APPLICATIONS ARE CONSOLIDATED).

(SEE INDEXED ENDORSEMENT PAGE 80).

14221-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE &
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V.
WHITBY BOAT WORKS LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 96).

14245-67-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. QUINTE
SANITATION SERVICES LIMITED (RESPONDENT). (WITHDRAWN).

14253-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. THERMOTEX
WINDOWS OF CANADA (RESPONDENT). (WITHDRAWN).

14256-67-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED
STATES AND CANADA (COMPLAINANT) V. IMPERIAL OPTICAL COMPANY LIMITED
(RESPONDENT). (WITHDRAWN).

14262-67-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL
220 (COMPLAINANT) V. CENTRE GREY GENERAL HOSPITAL (RESPONDENT).
(DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 98).

14263-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. BENARNAL
COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

14264-67-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506
(COMPLAINANT) V. PROGRESS PLASTERING LIMITED (RESPONDENT).
(WITHDRAWN).

14300-67-U: CANADIAN BROTHERHOOD OF RAILWAY TRANSPORT AND GENERAL
WORKERS (COMPLAINANT) V. COLLARD BROS. LIMITED, 39 COMSTOCK ROAD -
SCARBORO ONTARIO (RESPONDENT). (WITHDRAWN).

14332-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. KENNETH S.
FRASER CO. LTD. (RESPONDENT). (WITHDRAWN).

14342-67-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V.
LAIDLAW TRANSPORT LIMITED (RESPONDENT). (WITHDRAWN).

14355-67-U: CANADIAN ENGINEERING AND CONTRACTING CO. LIMITED
(COMPLAINANT) V. LOCAL UNION 18, UNITED BROTHERHOOD OF CARPENTERS AND
JOINERS OF AMERICA (RESPONDENT). (WITHDRAWN).

14373-67-U: MAURICE BROSAN EXECUTIVE MEMBER LOCAL 43. C.U.P.E.
(COMPLAINANT) V. DOUG PASSMORE EXECUTIVE MEMBER LOCAL 43 C.U.P.E.
(RESPONDENT). (WITHDRAWN).

14374-67-U: MAURICE BROSAN EXECUTIVE MEMBER LOCAL 43. C.U.P.E.
(COMPLAINANT) V. WILLIAM OVERKOTT PRESIDENT LOCAL 43. C.U.P.E.
(RESPONDENT). (WITHDRAWN).

14375-67-U: MAURICE BROSAN, EXECUTIVE OFFICER LOCAL 43 C.U.P.E.
(COMPLAINANT) V. WILLIAM OVERKOTT, PRESIDENT LOCAL 43 C.U.P.E.
(RESPONDENT). (WITHDRAWN).

14392-68-U: THE HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 299, TORONTO, OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION - A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. BRAMFIELD RESTAURANTS LIMITED, TORONTO AT ITS BOILER ROOM (RESPONDENT). (WITHDRAWN).

14400-68-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. ASSOCIATED FREEZERS (RESPONDENT). (WITHDRAWN).

14411-68-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT). (WITHDRAWN).

14425-68-U: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (COMPLAINANT) V. ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

14457-68-U: JAMES SPEIRS (COMPLAINANT) V. EDMUND BOYER (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 102).

APPLICATION FOR ADDITION OF A PROVISION TO A COLLECTIVE AGREEMENT

PURSUANT TO SECTION 33(2) DISPOSED OF DURING APRIL

14402-68-M: LIVINGSTON INDUSTRIES LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 103).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

14282-67-M: UNITED STEELWORKERS OF AMERICA LOCAL 4820, AND HALEY INDUSTRIES LIMITED (APPLICANTS). (GRANTED).

14440-68-M: DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F. OF L. - C.I.O. - C.L.C., AND TRANE COMPANY OF CANADA, LIMITED (APPLICANTS). (GRANTED).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

APRIL

13997-67-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. STEEP ROCK IRON MINES LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 105).

14372-67-M: UNITED ELECTRICAL, RADIO & MACHINE WORKERS OF AMERICA (UE) & ITS LOCAL 517 (APPLICANT) V. THE CORPORATION OF THE CITY OF WELLAND (RESPONDENT). (DISMISSED).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

14135-67-M: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO (TRADE UNION) V. CANADIAN WESTINGHOUSE CO. LTD. (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 108).

14250-67-M: INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (TRADE UNION) V. TONY SUPPA CONSTRUCTION (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 112).

14421-68-M: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 880 (TRADE UNION) V. MOTOR TRANSPORT INDUSTRIAL RELATIONS BUREAU OF ONTARIO (INC) ACTING ON BEHALF OF: AUTO HAULWAY LIMITED, GEN AUTO SHIPPERS, NU-CAR RELEASING LTD., RUSSELL TRANSPORT LTD. (EMPLOYERS). (DISMISSED).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13853-67-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 (APPLICANT) V. SOO DAIRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 115).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - LOCKOUT UNLAWFUL

14223-67-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 1687 (APPLICANT) V. BEAMER AND LATHROP LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 122).

INDEXED ENDORSEMENTS - CERTIFICATION

13456-67-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA, LOCAL 905 (APPLICANT) V. KING OPTICAL COMPANY (RESPONDENT) V. CANADIAN OPTICAL WORKERS' UNION 202 - N.C.C.L. (INTERVENER).

BEFORE: J.F.W. WEATHERILL, VICE-CHAIRMAN AND BOARD MEMBERS
J.E.C. ROBINSON AND O. HODGES.

DECISION OF J.F.W. WEATHERILL, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES: APRIL 9, 1968.

1. THIS MATTER WAS LISTED FOR CONTINUATION OF HEARING ON FEBRUARY 8TH, 1968. PRIOR TO THE HEARING, HOWEVER, THE RESPONDENT WITHDREW CERTAIN ALLEGATIONS WHICH IT HAD FILED AGAINST THE APPLICANT, INTERNATIONAL UNION OF DOLL & TOY WORKERS. THERE THEN REMAINED NO ISSUE ON WHICH IT APPEARED NECESSARY TO HEAR EVIDENCE OR ARGUMENT, THE OTHER OUTSTANDING ISSUES HAVING BEEN CANVASSED AT PRIOR HEARINGS.

2. THE INTERVENER, CANADIAN OPTICAL WORKERS' UNION, HOWEVER, INDICATED ITS DESIRE TO MAKE REPRESENTATIONS IN THE MATTER NOTWITHSTANDING THAT ITS APPLICATION FOR CERTIFICATION HAD BEEN DISMISSED. THE BOARD PERMITTED THE INTERVENER TO MAKE SUCH REPRESENTATIONS IN WRITING AND HAS CONSIDERED THEM TOGETHER WITH THE REPLIES THERETO FILED BY THE OTHER PARTIES.

3. THE INTERVENER REQUESTS THAT A REPRESENTATION VOTE SHOULD BE HELD HAVING REGARD TO THE PARTICULAR CIRCUMSTANCES OF THIS CASE. SUCH A VOTE WOULD BE IN THE FORM OF A STANDARD "ONE-WAY" VOTE IN WHICH EMPLOYEES OF THE RESPONDENT WOULD BE ASKED WHETHER OR NOT THEY WISHED TO BE REPRESENTED BY THE INTERNATIONAL UNION OF DOLL & TOY WORKERS. IN SUPPORT OF ITS REQUEST, THE INTERVENER REFERS TO THE CIRCUMSTANCES OF ITS OWN APPLICATION. THIS APPLICATION WAS DISMISSED ON DECEMBER 13TH, 1967 AS A RESULT OF THE BOARD'S FINDING OF THE NON-PAYMENT OF \$1.00 BY ONE OF THE PERSONS FOR WHOM EVIDENCE OF MEMBERSHIP WAS SUBMITTED. THE INTERVENER HAD ALSO MADE CERTAIN ALLEGATIONS OF UNFAIR PRACTICES WHICH FOR THE REASONS SET OUT IN THE ENDORSEMENT OF JANUARY 24TH, 1968 THE BOARD REFUSED TO HEAR.

4. IN ESSENCE, THE INTERVENER'S REQUEST IS BASED ON THE "DOUBT SURROUNDING THIS APPLICATION". THERE MAY INDEED BE CASES IN WHICH DOUBTS ARISE; ONE OF THE PURPOSES OF JUDICIAL OR QUASI-JUDICIAL PROCEEDINGS IS TO PROVIDE THE FORUM WHERE THE GROUNDS OF SUCH DOUBTS MAY, UPON A PROPER APPLICATION AND PURSUANT TO ORDERLY PROCEDURES BE ESTABLISHED AND A TRUE JUDGMENT GIVEN. AS A RESULT OF SUCH PROCEEDINGS IN THE INSTANT CASE, THE INTERVENER'S APPLICATION HAS BEEN DISMISSED AND ITS CHARGES NOT HEARD FOR REASONS SET OUT IN PREVIOUS ENDORSEMENTS. WE ARE LEFT WITH THE APPLICATION OF THE APPLICANT WHICH SHOULD NOW BE PROCEEDED WITH IN THE USUAL FASHION, ALTHOUGH HAVING FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF AT LEAST ONE EMPLOYEE THE INTERVENER HAS THE RIGHT TO BE HEARD AND HAS BEEN HEARD IN THESE PROCEEDINGS. WE ARE UNABLE TO SEE ANY PROPER GROUND FOR DISTINCTION BETWEEN THIS CASE AND ANY OTHER CASE IN WHICH, ON AN APPLICATION FOR CERTIFICATION, A COMPETING TRADE UNION APPEARS AND REFERS TO THE EXTENT OF ITS OWN MEMBERSHIP AS CASTING A "DOUBT" ON THE APPLICATION BEFORE THE BOARD. THE PROPER EXPRESSION OF SUCH A DOUBT IS IN AN APPLICATION BEFORE THIS BOARD AND IN THE INSTANT CASE SUCH AN APPLI-

CATION HAS BEEN DISMISSED. TO GIVE EFFECT TO THE INTERVENER'S MOTION IN OUR VIEW WOULD BE TO GIVE WEIGHT TO MATTERS WHICH OUGHT NOT TO BE CONSIDERED IN THE CIRCUMSTANCES OF THIS CASE.

5. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 9TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: APRIL 9, 1968.

I DISSENT. I HAVE ALREADY FOUND AGAINST THE MAJORITY DECISION WHICH DISMISSED THE APPLICATION OF THE CANADIAN OPTICAL WORKERS' UNION - N.C.C.L. AT AN EARLIER HEARING.

IT FOLLOWS, THEREFORE, THAT I WOULD HAVE GIVEN EFFECT TO THE MEMBERSHIP EVIDENCE SUBMITTED BY THE CANADIAN OPTICAL WORKERS' UNION - N.C.C.L. AND WOULD HAVE DIRECTED A VOTE AMONGST THE EMPLOYEES IN THE BARGAINING UNIT TO ASCERTAIN THEIR CHOICE BETWEEN THE TWO COMPETING UNIONS.

14054-67-R: COMMUNICATIONS WORKERS OF AMERICA (AFL-CIO-CLC)
(APPLICANT) v. AMPLITROL ELECTRONICS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT HEARING: BORIS MATHER AND GERALD THOMPSON FOR THE APPLICANT, IRVING HIMEL, Q.C., AND H. W. BEAMES FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: APRIL 30, 1968.

. . .

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MARCH 19TH, 1968, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT E. DANIELS IS PRIMARILY EMPLOYED BY THE RESPONDENT IN ITS OFFICE AS AN OFFICE EMPLOYEE AND ACCORDINGLY IS EXCLUDED FROM THE BARGAINING UNIT UNDER THE EXCLUDED CLASSIFICATION OF OFFICE STAFF.

4. FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER DECLARES THAT R. EVANS PERFORMS SIMILAR FUNCTIONS TO EMPLOYEES OF THE RESPONDENT BASED AT TORONTO WHO ARE INCLUDED IN THE BARGAINING UNIT, AND SINCE HE OBTAINS HIS DIRECTIONS FROM, AND IS RESPONSIBLE TO, MEMBERS OF MANAGEMENT AT TORONTO, IT CAN CORRECTLY BE SAID THAT HE WORKS OUT OF METROPOLITAN TORONTO. IN ADDITION, IT WOULD APPEAR THAT MR. EVANS IS THE ONLY PERSON IN ONTARIO PERFORMING SIMILAR WORK TO THE OTHER BARGAINING UNIT EMPLOYEES AND IF THE BOARD WERE TO FIND THAT HE WAS NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT BECAUSE OF THE FACT THAT HE LIVED AT LONDON, ONTARIO, THE BOARD WOULD BE DEPRIVING MR. EVANS OF THE RIGHT TO COLLECTIVE BARGAINING EVEN THOUGH MR. EVANS HAS INDICATED HIS DESIRE TO BE REPRESENTED BY THE APPLICANT. FOR THE FOREGOING REASONS, THE BOARD THEREFORE DECLARES THAT R. EVANS IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

5. FINALLY, THE RESPONDENT HAS TAKEN THE POSITION THAT MARK GLICK EXERCISES MANAGERIAL FUNCTIONS OR IS EMPLOYED BY THE RESPONDENT IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, WE FIND THAT MR. GLICK SPENDS THE VAST MAJORITY OF HIS TIME PERFORMING WORK SIMILAR TO OTHER EMPLOYEES IN THE BARGAINING UNIT. WHILE IT IS RECOGNIZED THAT MR. GLICK HAS CERTAIN INCIDENTAL SUPERVISORY FUNCTIONS, WHICH HE OCCASIONALLY EXERCISES, SUCH FUNCTIONS ARE MORE IN THE NATURE OF FUNCTIONS PERFORMED BY LEAD HANDS. THE SUPERVISORY FUNCTIONS PERFORMED BY MR. GLICK, AS REPORTED BY THE EXAMINER, INDICATE THAT MR. GLICK HAS NO INDEPENDENT AUTHORITY TO MAKE MEANINGFUL DECISIONS WITH RESPECT TO THE EMPLOYMENT OF THE OTHER EMPLOYEES IN THE BARGAINING UNIT, AND FOR THE REASONS GIVEN BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379, THE BOARD FINDS THAT MR. GLICK DOES NOT EXERCISE MANAGERIAL FUNCTIONS NOR IS HE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, AND THE BOARD THEREFORE DECLARES THAT MARK GLICK IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 24TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: APRIL 30, 1968.

WHILE I AGREE WITH THE DECISION OF THE MAJORITY IN RESPECT TO THE EXCLUSION FROM THE BARGAINING UNIT OF E. DANIELS AND THE INCLUSION IN THE UNIT OF E. ROBERT EVANS, I DISSENT IN RESPECT TO THE DECISION CONCERNING THE INCLUSION IN THE UNIT OF MARK GLICK. ON ALL OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT CONCERNING MR. GLICK, I FIND THAT HE EXERCISES MANAGERIAL FUNCTIONS AND I WOULD HAVE EXCLUDED MR. GLICK FROM THE BARGAINING UNIT.

14082-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. D. & E. PLASTERING LTD. (RESPONDENT) V. LOCAL 117, O.P. C.M.I.A. (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. KOSKIE AND T. NEIL FOR THE APPLICANT;
R. D. PERKINS AND A. DIGIROLAMO FOR THE RESPONDENT; AND NO ONE
APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 9, 1968.

1. IN ITS DECISION DATED FEBRUARY 16, 1968, THE BOARD ORDERED A REPRESENTATION VOTE TO BE TAKEN IN THIS MATTER IN A BARGAINING UNIT CONSISTING OF ALL CONSTRUCTION LABOURERS OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN BOARD AREA #8, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK. IN DUE COURSE THE PARTIES MADE ARRANGEMENTS FOR THE VOTE WHICH WAS SCHEDULED TO TAKE PLACE ON FRIDAY, MARCH 8, 1968. ON THAT DAY THERE WERE NO EMPLOYEES IN THE BARGAINING UNIT ELIGIBLE TO VOTE AND THE REPORT OF THE RETURNING OFFICER INDICATED THAT NO EMPLOYEES WERE ELIGIBLE TO VOTE AND THAT NO PERSON SOUGHT TO CAST A BALLOT.

2. IN THE CIRCUMSTANCES INDICATED IN PARAGRAPH 1 THE NORMAL PRACTICE OF THE BOARD WOULD BE TO SCHEDULE ANOTHER VOTE AT SOME FUTURE DATE. HOWEVER, THE APPLICANT TRADE UNION HAS ASKED THE BOARD TO FIND UNDER SECTION 7(5) OF THE LABOUR RELATIONS ACT THAT A FUTURE VOTE WOULD NOT

LIKELY DISCLOSE THE TRUE WISHES OF THE EMPLOYEES. THE APPLICANT SUBMITS FURTHER THAT IT IS NOW ENTITLED TO BE CERTIFIED WITHOUT A VOTE. IT IS CLEAR, AND THE BOARD SO FINDS, THAT ON THE "MEMBER DATE" ENVISAGED BY SECTION 7 OF THE ACT THE APPLICANT HAD AS MEMBERS OVER 50 PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT AND IS THUS ENTITLED TO SEEK RELIEF UNDER THE SAID SECTION 7(5).

3. THE RESPONDENT, A PLASTERING CONTRACTOR, HAS A COLLECTIVE BARGAINING RELATIONSHIP WITH THE INTERVENER WITH RESPECT TO ITS PLASTERERS AND PLASTERERS' APPRENTICES. THE EVIDENCE ESTABLISHES THAT AFTER RECEIVING NOTICE OF THE APPLICATION FOR CERTIFICATION AND PRIOR TO THE DAY SCHEDULED FOR THE TAKING OF THE VOTE, DIGIROLAMO, THE OWNER OF THE RESPONDENT, INDICATED TO HIS LABOURERS THAT HE PREFERRED THAT THEY BE REPRESENTED BY THE INTERVENER RATHER THAN THE APPLICANT TRADE UNION. THE EVIDENCE ALSO ESTABLISHES THAT ON APRIL 1, 1968, THE DAY BEFORE THE DAY SCHEDULED BY THE BOARD TO HEAR THE PARTIES ON THE SECTION 7(5) ISSUE, DIGIROLAMO NOT ONLY MADE IT CLEAR TO HIS LABOURER EMPLOYEES THAT HE PREFERRED THE INTERVENER TO REPRESENT THEM, BUT COUPLED THIS PREFERENCE WITH THE STATEMENT THAT IF THEY WANTED TO BE REPRESENTED BY THE APPLICANT THEY WOULD HAVE TO LOOK FOR ANOTHER JOB AND IF THEY WANTED TO WORK FOR HIM THEY WOULD HAVE TO BELONG TO THE INTERVENER TRADE UNION. DIGIROLAMO COULD OFFER NO EXPLANATION AS TO WHY HE CHOSE TO SPEAK TO HIS EMPLOYEES ON APRIL 1ST.

4. WITHOUT EXPRESSING ANY FINAL OPINION AS TO WHETHER IN SOME CIRCUMSTANCES AN EMPLOYER MAY OR MAY NOT BE ENTITLED TO EXPRESS A PREFERENCE BETWEEN COMPETING UNIONS, WE ARE SATISFIED IN THIS CASE THAT THE ACTIONS OF THE RESPONDENT'S OWNER, VIEWED AS A WHOLE, MAKE IT UNLIKELY THAT THE TRUE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT WOULD BE DISCLOSED BY A REPRESENTATION VOTE.

5. IN THE RESULT, THEREFORE, A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14133-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. THE COUNCIL OF NORTHERN ELECTRIC ENGINEERING TECHNICIANS, TORONTO WORKS (INTERVENER #1) V. THE ONTARIO COUNCIL OF NORTHERN ELECTRIC ENGINEERS AND ASSOCIATES (INTERVENER #2).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: T. E. ARMSTRONG, T. L. BURNETT, LARRY REDMOND AND WEBSTER CORNWALL FOR THE APPLICANT, D. NEWTON, T. S. SCOTT AND E. TURCOT FOR THE RESPONDENT, GERALD CHARNEY, RENE FOISY-MARQUIS AND RAY WATERHOUSE FOR INTERVENER #1, E. M. DAGLISH FOR INTERVENER #2, IAN SCOTT, J. DENMAN, D. W. CUSHING, M. HALL AND M. A. BILYEA FOR NORTHERN ELECTRIC OFFICE EMPLOYEE ASSOCIATION.

DECISION OF THE BOARD: APRIL 16, 1968.

1. THIS MATTER CAME ON FOR HEARING PURSUANT TO THE DIRECTION CONTAINED IN THE BOARD'S DECISION DATED FEBRUARY 29TH, 1968, TO AFFORD INTERVENER #1 AN OPPORTUNITY TO ESTABLISH ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT AND TO INQUIRE WHETHER THE UNIT PROPOSED BY INTERVENER #1 CONSTITUTES A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

2. THE EVIDENCE CALLED BY INTERVENER #1 IN SUPPORT OF ITS STATUS AS A TRADE UNION ESTABLISHED THAT INTERVENER #1 WAS AN EXTENSION OR DEVELOPMENT OF AN ASSOCIATION OF ENGINEERING TECHNICIANS EMPLOYED BY THE RESPONDENT WHICH WAS ORGANIZED SOME TWO YEARS PRIOR TO THE EVENTS IN QUESTION AND WHICH WAS KNOWN BY THE SAME NAME AS THAT ADOPTED BY INTERVENER #1. THE WITNESSES TESTIFIED THAT THE EARLIER ASSOCIATION ORIGINATED FROM A GROUP CALLED DESIGN CONTROL. THE WITNESSES FOR INTERVENER #1 TESTIFIED THAT NOT ALL PERSONS FROM THE GROUP FORMING THE ORIGINAL ASSOCIATION WOULD BE ELIGIBLE FOR MEMBERSHIP IN INTERVENER #1 DUE TO THE MANAGERIAL FUNCTIONS EXERCISED BY SOME OF THOSE PERSONS. NO OTHER EVIDENCE WAS ADDUCED CONCERNING THE ORIGINATION OF THE EARLIER ASSOCIATION, ALTHOUGH IT WAS ADMITTED BY ALL PARTIES THAT THE EARLIER ASSOCIATION WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE EVIDENCE ADDUCED THROUGH THE WITNESSES OF INTERVENER #1 ESTABLISHED THAT A NOTICE CALLING A "SPECIAL EMERGENCY E.T. MEETING" OF THE ENGINEERING TECHNICIANS WAS POSTED AT THE RESPONDENT'S PLANT IN BRAMALEA. NONE OF THE WITNESSES APPARENTLY KNEW WHO POSTED THE NOTICE. HOWEVER, THE PRESIDENT OF INTERVENER #1 TESTIFIED THAT HE WAS THE ONE WHO DRAFTED THE NOTICE OF THE MEETING. THE NOTICE OF THE MEETING THAT WAS POSTED READS AS FOLLOWS:

"SPECIAL EMERGENCY E.T. MEETING"

TUESDAY, JAN. 30, 1968

TIME: 4:30 P.M.

CLARKE BLVD. PUBLIC SCHOOL
201 CLARKE BLVD., BRAMALEA

AGENDA:

1. REPORT ON PRESENT SITUATION OF COUNCIL
2. MEMBERSHIP DECISION RELATED TO EXISTENCE OF COUNCIL, ITS FUNCTIONS, ITS GOAL, ITS FUTURE.
3. NEW BUSINESS

IF YOU DON'T CARE ABOUT YOUR FUTURE DON'T BOTHER TO SHOW UP, BUT IF YOU ARE INTERESTED TO KNOW WHAT'S GOING ON AND WHAT YOU CAN DO ABOUT IT THEN YOUR EXECUTIVE URGES YOU TO COME.

DON'T COME ALONE, BE A LEADER, BRING ALL ET'S WITH YOU!

4. THE WITNESSES TESTIFIED THAT A MEETING WAS HELD ON JANUARY 29TH, 1968 (WHICH DATE WAS THE DAY PRIOR TO THE TIME SET FORTH IN THE NOTICE OF THE MEETING). AT THE MEETING, THE PERSONS IN ATTENDANCE PURPORTED TO DISBAND THE COUNCIL OF NORTHERN ELECTRIC ENGINEERING TECHNICIANS, TORONTO WORKS. THE NEXT MATTER DEALT WITH AT THE MEETING, AS RECORDED BY THE MINUTES, WAS "THAT A BODY OF NORTHERN ELECTRIC ENGINEERING TECHNICIANS BE FORMED TO COLLECTIVELY BARGAIN FOR THE ENGINEERING TECHNICIANS AT TORONTO DIVISION, PEEL COUNTY AS PRESCRIBED BY THE CONSTITUTION. A MOTION WAS PASSED ADOPTING THE CONSTITUTION OF THE COUNCIL OF NORTHERN ELECTRIC ENGINEERING TECHNICIANS, TORONTO WORKS, A COPY OF WHICH WAS FILED AT THE HEARING.

5. THE CONSTITUTION AND BY-LAWS ADOPTED AT THE MEETING READ AS FOLLOWS:

CONSTITUTION
OF
THE COUNCIL OF NORTHERN ELECTRIC ENGINEERING TECHNICIANS
TORONTO WORKS

ARTICLE I - NAME

THE NAME OF THIS ORGANIZATION SHALL BE THE COUNCIL OF NORTHERN ELECTRIC ENGINEERING TECHNICIANS - TORONTO WORKS, HEREINAFTER REFERRED TO AS THE COUNCIL.

ARTICLE II - PURPOSES

SECT. 1: TO FORM A COHESIVE BODY OF ENGINEERING TECHNICIANS.

SECT. 2: TO PROVIDE A MEANS OF COMMUNICATION BETWEEN THE ENGINEERING TECHNICIANS AS A GROUP AND MANAGEMENT, RELATIVE TO MATTERS OF MUTUAL BENEFIT TO THE ENGINEERING TECHNICIANS AND THE COMPANY.

SECT. 3: TO IMPROVE THE GENERAL STATUS OF ENGINEERING TECHNICIANS IN A PROFESSIONAL, TECHNICAL AND MANAGEMENT SENSE.

- SECT. 4: TO PROVIDE A MEANS OF COMMUNICATION AMONG ENGINEERING TECHNICIANS AND BETWEEN ENGINEERING TECHNICIANS AND ENGINEERS WITH THE OBJECT OF CREATING AN ATMOSPHERE OF ENGINEERING FELLOWSHIP AND CONSEQUENT IMPROVEMENT IN ENGINEERING ACTIVITIES.
- SECT. 5: (A) TO ORGANIZE ALL EMPLOYEES WHO ARE EMPLOYED BY NORTHERN ELECTRIC COMPANY LIMITED IN THE COUNTY OF PEEL AS NON-SUPERVISORY ENGINEERING TECHNICIANS AND WHO FALL WITHIN THE DESCRIPTION OF ENGINEERING TECHNICIANS AS DEFINED BY THE COMPANY.
- (B) TO PROTECT, MAINTAIN AND ADVANCE THE INTERESTS OF THE MEMBERS OF THE COUNCIL.
- (C) SUBJECT TO THE PROVISIONS OF ANY STATUTE, EITHER PROVINCIAL OR DOMINION, AND THE REGULATIONS FROM TIME TO TIME IN FORCE RELATING TO LABOUR RELATIONS MATTERS, TO BARGAIN COLLECTIVELY AND TO ACT AS A COLLECTIVE BARGAINING AGENCY.
- (D) TO ENCOURAGE AND PROMOTE CO-OPERATIVE ENTERPRISES AND SECURITY, PENSION, AND INSURANCE PLANS AND ARRANGEMENTS.
- (E) TO DO ALL SUCH OTHER THINGS AS ARE NECESSARY OR INCIDENTAL TO THE ATTAINMENT OF THE ABOVE OBJECTS.

ARTICLE III - QUALIFICATIONS FOR MEMBERSHIP

- SECT. 1: EMPLOYEES SHALL BE ELIGIBLE FOR MEMBERSHIP WHO ARE EMPLOYED BY NORTHERN ELECTRIC COMPANY LIMITED IN THE COUNTY OF PEEL AS NON-SUPERVISORY ENGINEERING TECHNICIANS AND WHO FALL WITHIN THE DESCRIPTION OF ENGINEERING TECHNICIANS AS DEFINED BY THE COMPANY.
- SECT. 2: RESIGNATION FROM THE COUNCIL AND ADMISSION AND RE-INSTATEMENT TO THE COUNCIL SHALL BE AS COVERED IN THE BY-LAWS.
- SECT. 3: MEMBERSHIP IN THE COUNCIL SHALL NOT IN ANY WAY AFFECT THE INDIVIDUAL RELATIONSHIP BETWEEN A MEMBER AND THE COMPANY.

ARTICLE IV - OFFICERS AND DUTIES

- SECT. 1: THE GOVERNING BODY OF THE COUNCIL SHALL BE THE EXECUTIVE COMMITTEE WHICH SHALL CONSIST OF THE OFFICERS, NAMELY THE PRESIDENT, VICE-PRESIDENT, SECRETARY-TREASURER, AND TWO EXECUTIVE OFFICERS, ALL ELECTED OR APPOINTED AS PROVIDED IN THE BY-LAWS.

SECT. 2: THE EXECUTIVE COMMITTEE SHALL MANAGE THE AFFAIRS OF THE COUNCIL. THE EXECUTIVE COMMITTEE SHALL PRESENT TO THE MEMBERS AN ANNUAL REPORT OF THE COUNCIL ACTIVITIES AND A DULY AUDITED FINANCIAL STATEMENT FOR THE YEAR.

ARTICLE V - COMMITTEES

SECT. 1: THE EXECUTIVE COMMITTEE SHALL HAVE AUTHORITY TO APPOINT COMMITTEES AS SPECIFIED IN THE BY-LAWS.

ARTICLE VI - DUES AND FEES

SECT. 1: CONDITIONS OF PAYMENT, AND THE AMOUNTS OF THE INITIATION FEES AND DUES SHALL BE LAID DOWN IN THE BY-LAWS.

ARTICLE VII - MEETINGS OF COUNCIL

SECT. 1: AN ANNUAL GENERAL MEETING SHALL BE HELD IN SEPTEMBER. OTHER GENERAL MEETINGS MAY BE CALLED BY THE EXECUTIVE. SPECIAL GENERAL MEETINGS MAY BE CALLED BY THE EXECUTIVE, OR BY THE MEMBERSHIP UPON SUBMISSION OF A WRITTEN REQUEST TO THE SECRETARY-TREASURER; THE REQUEST TO BE SIGNED BY AT LEAST 10 MEMBERS.

SECT. 2: THE QUORUM AT GENERAL MEETINGS AND SPECIAL GENERAL MEETINGS SHALL BE 20% OF THE REGISTERED MEMBERS.

SECT. 3: THE MEMBERS OF THE EXECUTIVE PRESENT AT A GENERAL OR SPECIAL GENERAL MEETING SHALL NOT BE COUNTED WHEN ESTABLISHING A QUORUM.

ARTICLE VIII - AMENDMENT TO THE CONSTITUTION

SECT. 1: AMENDMENTS TO THE CONSTITUTION MAY BE PROPOSED BY THE SIGNED PETITION OF AT LEAST 10 MEMBERS OR BY A MAJORITY OF THE EXECUTIVE COMMITTEE.

SECT. 2: THE CONSTITUTION MAY BE AMENDED AT ANY GENERAL MEETING BY A TWO-THIRDS MAJORITY OF ALL MEMBERS PRESENT, PROVIDED THAT NOTICE OF THE AMENDMENT HAS BEEN GIVEN IN THE NOTICE OF THE MEETING.

SIGNATURES:

RENE FOISY-MARQUIS

R. E. WATERHOUSE

PASQUALE P. FERRARA

NELSON MILLER

29 JANUARY 1968

BYLAWS
OF
THE COUNCIL OF NORTHERN ELECTRIC ENGINEERING TECHNICIANS
TORONTO WORKS

BYLAW 1 - MEMBERSHIP

- A: A MEMBER SHALL BE IN GOOD STANDING AND SHALL ENJOY THE PRIVILEGES OF MEMBERSHIP PROVIDED HE HAS COMPLIED WITH THE REQUIREMENTS OF THE CONSTITUTION AND BYLAWS.
- B: A MEMBER IN GOOD STANDING MAY RESIGN AT ANY TIME BY NOTIFYING THE SECRETARY-TREASURER, IN WRITING, OF HIS INTENT TO RESIGN.
- C: A FORMER MEMBER MAY BE REINSTATED BY THE EXECUTIVE COMMITTEE PROVIDED HE CAN AGAIN FULFILL ALL THE CONDITIONS OF ELIGIBILITY.

BYLAW 2 - ORGANIZATION

- A: THE GOVERNING BODY OF THE COUNCIL SHALL BE AS OUTLINED IN THE CONSTITUTION.
- B: A TERM OF OFFICE SHALL BE FROM ONE ANNUAL GENERAL MEETING TO THE FOLLOWING ANNUAL GENERAL MEETING.
- C: THE PRESIDENT SHALL BE THE REGULAR PRESIDING OFFICER AT MEETINGS OF THE COUNCIL. THE PRESIDENT SHALL BE EX-OFFICIO MEMBER OF EACH COMMITTEE, EXCEPTING THE NOMINATING COMMITTEE.
- D: THE VICE-PRESIDENT SHALL ASSUME THE DUTIES OF THE PRESIDENT IN HIS ABSENCE OR INCAPACITY.
- E: THE SECRETARY-TREASURER SHALL BE RESPONSIBLE FOR THE NOTIFICATION OF ALL EXECUTIVE COMMITTEE MEETINGS, ALL GENERAL AND SPECIAL GENERAL MEETINGS AND THE RECORDING OF THE MINUTES OF SUCH MEETINGS. THE SECRETARY-TREASURER SHALL BE RESPONSIBLE FOR THE CORRESPONDENCE OF THE COUNCIL, THE KEEPING OF FULL RECORDS THEREOF, AND THE PROVISION OF SUCH INFORMATION FROM THE RECORDS AS REQUESTED BY THE MEMBERS OF THE EXECUTIVE COMMITTEE.
- F: THE SECRETARY-TREASURER, UNDER THE CONTROL OF THE EXECUTIVE COMMITTEE, SHALL HAVE GENERAL SUPERVISION OF THE FINANCIAL AFFAIRS OF THE COUNCIL AND SHALL BE RESPONSIBLE FOR THE KEEPING OF BOOKS OF ACCOUNT.
- G: ALL FUNDS OF THE COUNCIL SHALL BE DEPOSITED IN A LOCAL CHARTERED BANK OR NORTHERN ELECTRIC CREDIT UNION.

- H: ALL FINANCIAL DOCUMENTS REQUIRING EXECUTION ON BEHALF OF THE COUNCIL SHALL BE SIGNED BY THE SECRETARY-TREASURER AND EITHER THE PRESIDENT OR THE VICE-PRESIDENT.

BYLAW 3 - COMMITTEES

3.1 GENERAL

- A: THE EXECUTIVE COMMITTEE SHALL DIRECT AND CO-ORDINATE THE WORK OF ALL COMMITTEES EXCEPT THE NOMINATING COMMITTEE.
- B: UNLESS OTHERWISE STIPULATED IN THE CONSTITUTION OR BYLAWS, THE EXECUTIVE COMMITTEE SHALL APPOINT THE CHAIRMAN OF EACH COMMITTEE AND MAY SUGGEST POSSIBLE MEMBERS.
- C: EACH COMMITTEE SHALL REPORT TO THE EXECUTIVE COMMITTEE THROUGH AN APPOINTED MEMBER OF THE EXECUTIVE COMMITTEE.
- D: THE CHAIRMAN OF EACH COMMITTEE SHALL CHOOSE THE MEMBERS OF THAT COMMITTEE.
- E: A COMMITTEE SHALL BE RE-APPOINTED AFTER 12 MONTHS.
- F: THE EXECUTIVE COMMITTEE SHALL ESTABLISH NEW COMMITTEES AS REQUIRED.

3.2 NOMINATING COMMITTEE

- A: THE NOMINATING COMMITTEE SHALL CONSIST OF AT LEAST THREE MEMBERS.
- B: THE NOMINATING COMMITTEE SHALL BE APPOINTED NOT LATER THAN FOUR WEEKS BEFORE THE DATE OF THE ELECTIONS.
- C: THE NOMINATING COMMITTEE SHALL BE RESPONSIBLE FOR NOMINATING A SLATE OF OFFICERS WHO SHALL CONSIST OF THOSE ELIGIBLE MEMBERS BEST ABLE TO SERVE THE COUNCIL'S INTERESTS. WHERE COMPATIBLE WITH THIS PRINCIPLE, OFFICERS SHOULD BE NOMINATED FROM AS MANY ENGINEERING GROUPS AS POSSIBLE.
- D: THE NOMINATING COMMITTEE SHALL CARRY OUT THE RELEVANT DUTIES SPECIFIED IN THE SECTIONS OF THE CONSTITUTION AND BYLAWS DEALING WITH ELECTION OF OFFICERS.

BYLAW 4 - AUDIT

- A: TWO AUDITORS CHOSEN FROM THE MEMBERS SHALL BE APPOINTED BY THE EXECUTIVE, SUBJECT TO APPROVAL BY THE MEMBERS, NOT LATER THAN THE LAST MEETING HELD PRIOR TO THE ANNUAL MEETING.
- B: THE AUDIT SHALL COVER A FISCAL YEAR ENDING AUGUST 31st.

- C: THE AUDITORS SHALL SUBMIT A REPORT ON THEIR AUDIT TO THE ANNUAL GENERAL MEETING.

BYLAW 5 - DUES AND FEES

- A: APPLICATION FOR MEMBERSHIP SHALL BE ACCOMPANIED BY AN INITIATION FEE OF ONE DOLLAR.
- B: MONTHLY DUES AND SPECIAL ASSESSMENTS SHALL BE SET FROM TIME TO TIME BY MAJORITY VOTE AT GENERAL MEETING.

BYLAW 6 - ELECTION OF OFFICERS AND DELEGATES

- A: THE NOMINATING COMMITTEE SHALL NOMINATE A SLATE OF OFFICERS TO SERVE FOR THE SUCCEEDING TERM OF OFFICE, CONSISTING OF ONE NOMINEE FOR EACH EXECUTIVE POSITION. THE NOMINEE MUST AGREE THAT HIS NAME STAND PRIOR TO PUBLICATION OF THE PROPOSED SLATE.
- B: THE ELECTION OF OFFICERS SHALL BE HELD AT THE ANNUAL GENERAL MEETING. THE ELECTION DATE MAY BE POSTPONED ONE WEEK AT THE DISCRETION OF THE EXECUTIVE, SHOULD A REVISED SLATE BE NECESSARY.
- C: THE CHAIRMAN OF THE NOMINATING COMMITTEE SHALL PUBLISH A SLATE OF THE NOMINATED CANDIDATES NOT LATER THAN TWO WEEKS BEFORE THE DATE OF THE ELECTIONS.
- D: NO MEMBER SHALL BE NOMINATED TO MORE THAN ONE POSITION ON THE EXECUTIVE COMMITTEE.
- E: IF, AFTER THE NOMINATING COMMITTEE HAS POSTED THE SLATE OF CANDIDATES A NOMINEE BECOMES INELIGIBLE, OR WITHDRAWS, THE NOMINATING COMMITTEE SHALL RECONVENE AND POST A REVISED SLATE OF CANDIDATES.
- F: AFTER PUBLICATION OF THE SLATE OF NOMINATIONS, FURTHER NOMINATIONS, EACH SIGNED BY THREE MEMBERS, MAY BE SUBMITTED IN WRITING ADDRESSED TO THE CHAIRMAN OF THE NOMINATING COMMITTEE. THESE NOMINATIONS MUST REACH THE CHAIRMAN NOT LATER THAN TWO WEEKS BEFORE THE DATE OF THE ELECTIONS.
- G: WHEN TWO OR MORE MEMBERS ARE NOMINATED FOR THE SAME OFFICE, VOTING FOR THEIR ELECTION SHALL BE A SECRET BALLOT OR BY SHOW OF HANDS.
- H: BALLOT FORMS SHALL SHOW ONLY THE NAMES OF THE CANDIDATES NOMINATED AND THE POSITION FOR WHICH THEY ARE NOMINATED. THE NAMES SHALL BE ARRANGED IN ALPHABETICAL ORDER.

- I: ANY MARKS LIABLE TO PREVENT THE POSITIVE INDICATION OF A VOTE FOR A PARTICULAR CANDIDATE OR CANDIDATES, OR A FAILURE TO COMPLY WITH THE INSTRUCTIONS ACCOMPANYING THE BALLOTS MAY SPOIL THE BALLOT. THE RETURNING OFFICER SHALL DECIDE THE VALIDITY OF THESE BALLOTS.
- J: THE RETURNING OFFICER SHALL SCRUTINIZE AND RECORD THE TOTAL NUMBER OF VOTES CAST FOR EACH CANDIDATE AND SUBMIT THE RESULTS FOR PUBLICATION TO THE MEMBERSHIP.
- K: THE RETURNING OFFICER SHALL BE THE CHAIRMAN OF THE NOMINATING COMMITTEE. THE OTHER MEMBERS OF THE NOMINATING COMMITTEE SHALL ACT AS SCRUTINEERS.
- L: THE RETURNING OFFICER MAY NOT VOTE IN THE ELECTIONS EXCEPT THAT IN THE CASE OF A TIE-VOTE HE SHALL CAST THE DECIDING VOTE.
- M: IF DURING A TERM OF OFFICE ANY MEMBER OF THE EXECUTIVE COMMITTEE RESIGNS FROM HIS POSITION, HE SHALL BE REPLACED BY AN ELIGIBLE MEMBER CHOSEN BY THE EXECUTIVE COMMITTEE, WITHIN TWO WEEKS OF THE DATE OF THE OFFICER'S RESIGNATION.
- N: IF AFTER ELECTION A MEMBER IS UNABLE TO TAKE OFFICE, HE SHALL BE REPLACED BY AN ELIGIBLE MEMBER CHOSEN BY THE EXECUTIVE COMMITTEE WITHIN TWO WEEKS OF THAT COMMITTEE TAKING OFFICE.
- O: ALL MEMBERS NONINATED FOR ELECTION SHALL FULFILL THE STIPULATED CONDITIONS OF ELIGIBILITY.

BYLAW 7 - MEETINGS

- A: NOTICE OF GENERAL AND SPECIAL GENERAL MEETINGS SHALL BE GIVEN AT LEAST FIVE WORKING DAYS IN ADVANCE. NOTICE OF A SPECIAL GENERAL MEETING SHALL STATE ITS SPECIFIC PURPOSE AND NO OTHER BUSINESS SHALL BE DISCUSSED AT THE MEETING.
- B: SPECIAL GENERAL MEETINGS SHALL BE HELD WITHIN FIFTEEN WORKING DAYS OF THE RECEIPT OF A WRITTEN REQUEST TO THE SECRETARY-TREASURER OF THE EXECUTIVE.
- C: "ROBERT'S RULES OF ORDER" WILL APPLY.
- D: EXECUTIVE COMMITTEE MEETINGS SHALL BE HELD AT LEAST ONCE A MONTH.
- E: A QUORUM OF THE EXECUTIVE COMMITTEE SHALL CONSIST OF THREE OF ITS MEMBERS OF WHOM ONE SHALL BE THE PRESIDENT OR VICE-PRESIDENT.

BYLAW 8 - AMENDMENT TO THE BYLAWS

- A: AMENDMENT TO THE BYLAWS SHALL BE PROPOSED IN WRITING BY ANY MEMBER IN GOOD STANDING.
- B: A TWO-THIRDS MAJORITY VOTE AT A GENERAL MEETING OR SPECIAL GENERAL MEETING SHALL BE NECESSARY FOR THE ADOPTION OF AN AMENDMENT TO THE BYLAWS, PROVIDED THAT NOTICE OF THE AMENDMENT HAS BEEN GIVEN IN THE NOTICE OF THE MEETING.

SIGNATURES:

RENE FOISY-MARQUIS

R. E. WATERHOUSE

PASQUALE P. FERRARA

29 JANUARY 1968

NELSON MILLER

6. THE CONSTITUTION ADOPTED BY THE MEETING WAS IN SUBSTANTIALLY THE SAME FORM AS THE CONSTITUTION OF THE EARLIER ASSOCIATION. THE MAIN DIFFERENCE BETWEEN THE EARLIER CONSTITUTION AND THE CONSTITUTION ADOPTED BY THE MEETING WAS THAT THE SUBSEQUENT CONSTITUTION CONTAINED PROVISIONS IN ITS OBJECTS CLAUSE ADDING TO THE PURPOSES OF THE ASSOCIATION THE PURPOSE OF ORGANIZING ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AS NON-SUPERVISORY ENGINEERING TECHNICIANS AND WHO FALL WITHIN THE DESCRIPTION OF THE ENGINEERING TECHNICIANS AS DEFINED BY THE COMPANY AND TO REGULATE THE RELATIONS BETWEEN SUCH EMPLOYEES AND THE RESPONDENT BY COLLECTIVE BARGAINING.
7. THE QUALIFICATIONS FOR MEMBERSHIP AS SET OUT IN THE CONSTITUTION READS, IN PART, AS FOLLOWS: "EMPLOYEES SHALL BE ELIGIBLE FOR MEMBERSHIP ... WHO FALL WITHIN THE DESCRIPTION OF ENGINEERING TECHNICIANS AS DEFINED BY THE COMPANY." THE BY-LAWS ANNEXED TO THE CONSTITUTION PROVIDE FOR THE PAYMENT OF AN INITIATION FEE OF ONE DOLLAR. WHILE MONTHLY DUES AND SPECIAL ASSESSMENTS ARE CONTEMPLATED BY THE BY-LAWS, NO STEPS HAVE BEEN TAKEN UP TO THE HEARING IN THIS MATTER TO ESTABLISH THE AMOUNT OF THE MONTHLY DUES. THE BY-LAWS ALSO PROVIDE FOR THE MANNER IN WHICH OFFICERS AND DELEGATES SHALL BE ELECTED. FOLLOWING THE ADOPTION OF THE CONSTITUTION AT THE MEETING, A MOTION WAS ADOPTED "THAT AN INTERIM EXECUTIVE BE ELECTED FOR THE REMAINDER OF THE CONSTITUTIONAL TERM." OFFICERS WERE THEN ELECTED, SOME OF WHOM ALSO HELD OFFICE IN THE ORIGINAL ASSOCIATION. THE ELECTION OF OFFICERS AT THE MEETING WAS NOT CARRIED OUT IN ACCORDANCE WITH THE PROVISIONS OF THE CONSTITUTION WHICH HAD BEEN ADOPTED. IMMEDIATELY FOLLOWING THE MEETING, MANY OF THOSE PRESENT SIGNED APPLICATIONS FOR MEMBERSHIP IN "THE COUNCIL OF NORTHERN

ELECTRIC ENGINEERING TECHNICIANS, TORONTO DIVISION" AND PAID ONE DOLLAR INITIATION FEE. THE TREASURY OF THE EARLIER ASSOCIATION IN THE AMOUNT OF \$144.17 WAS TRANSFERRED TO THE NEW ASSOCIATION.

8. THE EVIDENCE ADDUCED ESTABLISHED THAT AN ATTEMPT WAS MADE TO REPLACE THE EARLIER ASSOCIATION WITH A NEW ASSOCIATION HAVING THE SAME NAME, SOME OF THE SAME OFFICERS AND THE SAME CONSTITUTION AND BY-LAWS, APART FROM THE ADDITIONAL OBJECT OF DEALING WITH LABOUR RELATIONS MATTERS. HOWEVER, THE EVIDENCE FAILED TO ESTABLISH THAT THE NOTICE CALLING THE MEETING OF THE EARLIER ASSOCIATION, OUT OF WHICH THE NEW ASSOCIATION GREW, GAVE PROPER NOTICE OF THE INTENT TO DISBAND THE EARLIER ASSOCIATION AND TO TRANSFER ITS ASSETS TO THE NEW ASSOCIATION. IT ALSO IS TO BE NOTED THAT THE DATE APPEARING ON THE NOTICE OF MEETING WAS IN ERROR.

9. IN ADDITION IT IS TO BE NOTED THAT ONE OF THE QUALIFICATIONS FOR MEMBERSHIP IS THAT AN EMPLOYEE "FALL WITHIN THE DESCRIPTION OF ENGINEERING TECHNICIANS AS DEFINED BY THE COMPANY". SINCE THIS IS THE MAIN MEMBERSHIP REQUIREMENT, IT IS READILY APPARENT THAT THE COMPANY CAN INADVERTENTLY OR INTENTIONALLY ALTER THE BARGAINING UNIT SIMPLY BY RECLASSIFYING PERSONS WITHOUT IN ANY WAY CHANGING THEIR DUTIES AND RESPONSIBILITIES.

10. WHILE THE CONSTITUTION AND BY-LAWS CONTEMPLATE THAT PERSONS WISHING TO JOIN THE ASSOCIATION APPLY FOR MEMBERSHIP, THERE IS NO ACCURATE GUIDE AS TO HOW APPLICATIONS SHOULD BE MADE NOR IS THERE ANY APPROVED APPLICATION FORM.

11. IN ARGUMENT, COUNSEL FOR INTERVENER #1 ACKNOWLEDGED THAT WHILE THOSE IN ATTENDANCE AT THE MEETING PURPORTED TO "DISBAND" THE EXISTING ASSOCIATION SINCE NO PRIOR NOTICE OF INTENTION TO DO SO HAD BEEN SET FORTH IN THE NOTICE CALLING THE MEETING, IT WOULD BE CONTRARY TO THE PROVISIONS OF THE CONSTITUTION OF THE EARLIER ASSOCIATION TO ATTEMPT TO DO SO AT THE MEETING HELD ON JANUARY 29TH AND ACCORDINGLY SUCH ATTEMPT MUST FAIL. IF THE PERSONS PRESENT AT THE MEETING HAD KNOWLEDGE THAT THE EARLIER ASSOCIATION CONTINUED IN EXISTENCE AND ALSO HAD KNOWLEDGE THAT THE TREASURY OF THAT ASSOCIATION COULD NOT BE TAKEN OVER BY THE NEW ASSOCIATION, A REAL QUESTION ARISES AS TO WHETHER OR NOT IN THESE CIRCUMSTANCES THEY WOULD HAVE AGREED TO JOIN THE NEW ASSOCIATION SINCE ALL THEIR ACTIONS WERE APPARENTLY PREDICATED UPON THEIR UNDERSTANDING THAT THE EARLIER ASSOCIATION WAS DISBANDED AND THE TREASURY WAS TRANSFERRED.

12. THE PROCEDURAL STEPS TAKEN IN THE ATTEMPT TO ADOPT AN EFFECTIVE CONSTITUTION AND ELECT OFFICERS WERE SO FRAUGHT WITH OMISSIONS AND ERRORS AND WERE SO HAPHAZARD AND CONTRADICTORY THAT CONFUSION MUST HAVE BEEN CREATED IN THE MINDS OF EVERYONE AFFECTED BY WHAT TOOK PLACE.

13. ON ALL THE EVIDENCE BEFORE US, WE FIND THAT WHILE AN ATTEMPT WAS MADE TO CREATE THE PAPER DOCUMENTS WHICH INTERVENER #1 BELIEVED THE BOARD WOULD REQUIRE TO EVIDENCE THE CREATION OF A TRADE UNION, HOWEVER, THE CONFUSION AND CONTRADICTIONS SURROUNDING THE CREATION OF SUCH DOCUMENTS DEFEATED THE PURPOSE FOR WHICH THEY WERE CREATED. THE BOARD THEREFORE FINDS THAT INTERVENER #1 HAS FAILED TO ESTABLISH THAT IT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

14. THE APPLICATION FOR CERTIFICATION OF THE INTERVENER IS THEREFORE DISMISSED.

15. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

16. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 2 OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE PURSUANT TO THE BOARD'S DIRECTION OF FEBRUARY 29TH, 1968, IN THIS MATTER.

17. HAVING REGARD TO THE BARGAINING HISTORY OF THE RESPONDENT, THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS MANUFACTURING DIVISION IN THE COUNTY OF PEEL, SAVE AND EXCEPT SECTION CHIEFS, PERSONS ABOVE THE RANK OF SECTION CHIEF, ENGINEERS, MEMBERS OF THE PERSONNEL DEPARTMENT, NURSES, ONE SECRETARY TO THE WORKS MANAGER, AND ONE SECRETARY TO EACH PERSON REPORTING DIRECTLY TO THE WORKS MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

18. THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

19. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

20. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

21. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

14246-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) v. MAREL CONTRACTORS (RESPONDENT) v. OPERATIVE PLASTERERS' & CEMENT MASONS' INT. ASSOC. LOCAL 506 (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: J. SACK AND A. NEIL FOR THE APPLICANT;
R. B. STATTON AND M. MUZZO FOR THE RESPONDENT; AND A. BURIGANA
FOR THE INTERVENER.

DECISION OF THE BOARD: APRIL 19, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE 15 EMPLOYEES IN THE BARGAINING UNIT. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY PER CENT BUT LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 12TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. HAVING REGARD TO THE FINDINGS SET OUT IN PARAGRAPH 4, THE BOARD WOULD NORMALLY ORDER A REPRESENTATION VOTE. HOWEVER, THE APPLICANT IN THIS CASE ALLEGES THAT A REPRESENTATION VOTE WOULD NOT LIKELY DISCLOSE THE TRUE WISHES OF THE EMPLOYEES AND ASKS THE BOARD TO CERTIFY IT OUTRIGHT UNDER THE PROVISIONS OF SECTION 7(5) OF THE LABOUR RELATIONS ACT.

6. THE EVIDENCE RELATING TO THE LAST MENTIONED SUBMISSION OF THE APPLICANT IS TO SOME EXTENT CONTRADICTORY. AFTER CONSIDERING THIS EVIDENCE AND THE MANNER IN WHICH IT WAS GIVEN BY THE VARIOUS WITNESSES, WE ACCEPT THE EVIDENCE OF THE WITNESSES FOR THE APPLICANT WHERE IT IS IN CONFLICT WITH THAT GIVEN BY THE SINGLE WITNESS CALLED BY THE RESPONDENT. IN OUR VIEW, THE EVIDENCE ESTABLISHES THAT THE CONVERSATIONS WHICH THE MANAGER OF THE RESPONDENT HAD WITH HIS EMPLOYEES NOT ONLY INDICATED A PREFERENCE ON HIS PART FOR THE INTERVENER TRADE UNION AS OPPOSED TO THE APPLICANT TRADE UNION, BUT ALSO, VIEWED OBJECTIVELY, WOULD BE UNDERSTOOD BY HIS EMPLOYEES TO MEAN THAT, IF THEY DID NOT CONTINUE MEMBERSHIP IN THE INTERVENER, THEY WOULD HAVE TO LOOK FOR WORK ELSEWHERE.

A SIMILAR SITUATION AROSE IN A RECENT DECISION OF THE BOARD DATED APRIL 9TH, 1968, D. & E. PLASTERING LTD., BOARD FILE NO. 14082-67-R. IN THAT CASE THE BOARD FOUND THAT A REPRESENTATION VOTE WOULD NOT LIKELY DISCLOSE THE TRUE WISHES OF THE EMPLOYEES.

7. WHILE IN THE PARTICULAR CIRCUMSTANCES OF THE PRESENT CASE WE ARE NOT ENTIRELY UNSYMPATHETIC TO THE POSITION IN WHICH THE RESPONDENT FOUND ITSELF AND WHILE IT MIGHT BE ARGUED THAT THE MANAGER OF THE RESPONDENT ACTED IN GOOD FAITH, IT IS CLEAR FROM THE UNDERWOOD MANUFACTURING CO. LTD. CASE, 52 CLLC P. 1417, THAT WHAT THE BOARD IS CONCERNED WITH IS THE EFFECT OF AN EMPLOYER'S ACTIONS ON HIS EMPLOYEES, REGARDLESS OF INTENTION. IN THAT CASE THE BOARD SAID AT P. 1418:

IT MUST BE A QUESTION OF FACT IN EACH CASE AS TO WHETHER THE PARTICULAR CIRCUMSTANCES OF THE INDIVIDUAL CASE ARE SUCH AS TO HAVE A REASONABLE TENDENCY TOWARDS A COERCIVE EFFECT ON EMPLOYEES (EVEN IF NOT SO INTENDED) SO AS TO CREATE A LIKELIHOOD OF INTERFERING WITH THE FREE EXERCISE OF THEIR RIGHTS.

IN OUR VIEW, THE EVIDENCE IN THIS CASE (NOT ALL OF WHICH HAS BEEN REFERRED TO IN THIS DECISION) ESTABLISHES THAT THE ACTIONS OF THE RESPONDENT WERE SUCH AS TO MAKE IT UNLIKELY THAT A REPRESENTATION VOTE WOULD DISCLOSE THE TRUE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT.

8. IN THE RESULT, THEREFORE, A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14266-67-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DUTCH LAUNDRY AND DRY CLEANERS LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: W. W. TILLER AND E. MACDONALD FOR THE APPLICANT, B. W. BINNING, J. P. SANDERSON, F. R. VON VEH AND B. P. CRAMER FOR THE RESPONDENT

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: APRIL 25, 1968.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL DRIVER SALESMEN IN THE EMPLOY OF THE RESPONDENT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF.

3. THE RESPONDENT SUBMITS THAT THE APPLICATION IS UNTIMELY ON THE GROUNDS THAT IT IS A PARTY TO A CURRENT COLLECTIVE AGREEMENT WITH THE WHOLESALE AND RETAIL LAUNDRY AND DRY CLEANERS OF LONDON (HEREINAFTER REFERRED TO AS THE DRY CLEANERS OF LONDON) WHICH COVERS THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. THE APPLICANT BY LETTER DATED MARCH 22ND, 1968 ALLEGED THAT THE DRY CLEANERS OF LONDON IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. AT THE INITIAL HEARING IN THIS MATTER ON MARCH 27TH, 1968, THE REPRESENTATIVE OF THE APPLICANT ALTERNATIVELY ALLEGED THAT THE DRY CLEANERS OF LONDON HAD LOST ITS BARGAINING RIGHTS EITHER BY REASON OF IT HAVING CEASED TO EXIST OR BECAUSE IT HAD ABANDONED ITS BARGAINING RIGHTS.

4. COUNSEL FOR THE RESPONDENT AT THE INITIAL HEARING FILED A CERTIFICATE DATED MARCH 7TH, 1960, WHEREIN THE BOARD FOUND THAT THE DRY CLEANERS OF LONDON WAS A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. THE BOARD CERTIFIED THE UNION AS THE BARGAINING AGENT FOR ALL DRIVER-SALESMEN EMPLOYED BY THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF. SUBSEQUENT TO CERTIFICATION, THE RESPONDENT AND THE DRY CLEANERS OF LONDON ENTERED INTO A COLLECTIVE AGREEMENT DATED MARCH 12TH, 1960, WHICH WAS TO REMAIN IN EFFECT UNTIL DECEMBER 31ST, 1962, A COPY OF WHICH AGREEMENT WAS FILED WITH THE BOARD. THE EVIDENCE IS THAT THE SAME PARTIES ENTERED INTO ONE OR MORE COLLECTIVE AGREEMENTS, THE LAST ONE BEING DATED JANUARY 5TH, 1965, A COPY OF WHICH WAS ALSO FILED WITH THE BOARD. ARTICLE XII OF THE MOST RECENT AGREEMENT READS, IN PART:

THIS AGREEMENT SHALL REMAIN IN FORCE UNTIL THE 31ST DAY OF DECEMBER, 1967 AND SHALL CONTINUE IN FORCE FROM YEAR TO YEAR THEREAFTER UNLESS IN ANY YEAR NOT MORE THAN SIXTY DAYS AND NOT LESS THAN THIRTY DAYS BEFORE THE DATE OF ITS TERMINATION EITHER PARTY SHALL FURNISH THE OTHER WITH NOTICE OF TERMINATION OF OR PROPOSED REVISION OF THIS AGREEMENT.

5. COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT NEITHER PARTY TO THE ABOVE AGREEMENT GAVE NOTICE TO THE OTHER AS PROVIDED BY ARTICLE XII AND THAT CONSEQUENTLY THE AGREEMENT REMAINS IN EFFECT UNTIL DECEMBER 31ST, 1968.

6. AT THE SECOND HEARING ON APRIL 10TH, 1968, GEORGE PARGETER, WHO HAS BEEN EMPLOYED BY THE RESPONDENT AS A DRIVER SINCE 1965, WAS CALLED BY THE APPLICANT TO TESTIFY IN SUPPORT OF ITS CHARGES CONCERNING THE STATUS OF THE DRY CLEANERS OF LONDON. HIS EVIDENCE IS THAT HE WAS ADVISED BY THE RESPONDENT OF THE EXISTENCE OF THE UNION WHEN HE WAS FIRST

EMPLOYED AND THAT FIFTY CENTS A MONTH HAD BEEN DEDUCTED FROM HIS PAY EVERY MONTH FOR UNION DUES THROUGHOUT HIS EMPLOYMENT. PARGETER TESTIFIED THAT ANOTHER EMPLOYEE, JIM HAGGETT, HAD BEEN PRESIDENT OF THE UNION BUT HAD LEFT THE EMPLOY OF THE RESPONDENT SOME TIME IN 1967. ACCORDING TO PARGETER'S TESTIMONY HE BECAME PRESIDENT OF THE UNION IN THE FALL OF 1967. HE WAS UNABLE TO SATISFACTORILY EXPLAIN JUST HOW HE ACQUIRED THE OFFICE. IN ANY EVENT, HIS EVIDENCE IS THAT AT SOME POINT HAGGETT HANDED OVER TO HIM THE RECORDS OF THE UNION.

7. PARGETER FURTHER TESTIFIED THAT THERE EXISTED A BANK ACCOUNT IN THE NAME OF THE DRY CLEANERS OF LONDON WITH RESPECT TO WHICH HE AND ANOTHER EMPLOYEE WALTER KARSCH HAD SIGNING AUTHORITY. PARGETER'S EVIDENCE, WHICH WAS CONFIRMED BY KARSCH, IS THAT THE FORMER ASKED THE LATTER TO BE THE "BANKER" FOR THE UNION. KARSCH ACCEPTED THE POSITION AND ACCORDING TO HIS EVIDENCE THE RESPONDENT, EACH MONTH SINCE ABOUT LAST OCTOBER, HAS PAID THE MONTHLY DUES DEDUCTION TO KARSCH WHO DEPOSITED THEM IN THE BANK ACCOUNT. PARGETER'S TESTIMONY IS THAT SINCE HE HAS BEEN IN THE EMPLOY OF THE RESPONDENT, IN DECEMBER OF EACH YEAR, THE DUES DEPOSITED IN THE BANK ACCOUNT HAVE BEEN DIVIDED UP AMONG THOSE EMPLOYEES WHO HAD BEEN IN THE EMPLOY OF THE RESPONDENT FOR A YEAR'S DURATION. KARSCH AND PARGETER BOTH TESTIFIED THAT THIS WAS THE PRACTICE FOLLOWED IN DECEMBER OF 1967.

8. TWO OTHER EMPLOYEES, ERNEST LUCAS AND DAVID CAMERON, WHO HAVE BEEN EMPLOYED BY THE RESPONDENT FOR LESS THAN A YEAR, TESTIFIED THAT UNION DUES HAD BEEN DEDUCTED FROM THEIR PAY SINCE THEY COMMENCED THEIR EMPLOYMENT. THEIR EVIDENCE IS, HOWEVER, THAT THEY HAD NO KNOWLEDGE OF WHO WERE THE OFFICERS OF THE UNION AND HAD NOT ATTENDED ANY UNION MEETING NOR WERE THEY AWARE OF ANY MEETINGS BEING CALLED. THE ABSENCE OF ANY UNION MEETINGS WAS ALSO ATTESTED TO BY KARSCH COVERING HIS EMPLOYMENT WITH THE RESPONDENT FOR A PERIOD OF A YEAR AND A HALF. PARGETER, ON THE OTHER HAND, CLAIMED THAT IN THE FALL OF 1967 HE HAD POSTED NOTICE OF MEETINGS AND HELD MEETINGS OF THE UNION. HIS EVIDENCE, HOWEVER, WITH RESPECT BOTH TO UNION MEETINGS AND HIS ACQUISITION OF THE OFFICE OF PRESIDENT WAS VERY VAGUE AND WE ARE PREPARED TO PLACE LITTLE RELIANCE UPON IT.

9. THE DUES DEDUCTION MADE BY THE RESPONDENT IS PROVIDED FOR IN THE COLLECTIVE AGREEMENT. ACCORDING TO THE EVIDENCE OF ALL FOUR WITNESSES CALLED BY THE APPLICANT, HOWEVER, NONE OF THEM HAD GIVEN WRITTEN AUTHORIZATION TO THE RESPONDENT TO MAKE THE DUES DEDUCTION, WHICH IS ALSO A REQUIREMENT UNDER THE TERMS OF THE COLLECTIVE AGREEMENT DATED JANUARY 5TH, 1965. THE AGREEMENT AS WELL PROVIDES THAT THE RESPONDENT AGREES TO RECOMMEND TO EMPLOYEES HIRED DURING THE TERM OF THE AGREEMENT THAT THEY APPLY TO BECOME MEMBERS OF THE UNION ON COMPLETION OF THEIR PROBATIONARY PERIOD. ALL FOUR WITNESSES TESTIFIED THAT NO SUCH RECOMMENDATION HAD BEEN MADE TO THEM.

10. THE BOARD, IN CERTIFYING THE DRY CLEANERS OF LONDON IN 1960, FOUND THAT IT WAS A TRADE UNION WITHIN THE MEANING OF THE ACT.

SINCE EIGHT YEARS HAVE PASSED, THE ONUS RESTS ON THE APPLICANT TO SATISFY THE BOARD THAT THE UNION HAS CEASED TO EXIST, ABANDONED ITS BARGAINING RIGHTS OR OTHERWISE LOST ITS ENTITLEMENT TO REPRESENT THE EMPLOYEES OF THE RESPONDENT. THE EVIDENCE CALLED BY THE APPLICANT IN SUPPORT OF ITS CHARGES INDICATES THAT PROVISIONS OF THE COLLECTIVE AGREEMENT DATED JANUARY 5TH, 1965 HAVE NOT BEEN COMPLIED WITH AND THAT THERE HAVE BEEN NO MEETINGS OF THE UNION FOR SOME PERIOD OF TIME. FURTHER, THE EVIDENCE AS TO THE MANNER IN WHICH EMPLOYEES ACQUIRE OFFICE IN THE UNION LEAVES MUCH TO BE DESIRED. BE THAT AS IT MAY, UNION DUES HAVE CONTINUED TO BE DEDUCTED WHICH ARE DEPOSITED IN A BANK ACCOUNT REGISTERED IN THE NAME OF THE DRY CLEANERS OF LONDON. FURTHER, PARGETER, WHO CLAIMS TO BE PRESIDENT OF THE UNION, AND KARSCH, WHO CLAIMS TO BE "BANKER" FOR THE UNION, HAVE THE SIGNING AUTHORITY FOR THAT ACCOUNT.

11. FROM THE TIME THE BOARD FOUND THE DRY CLEANERS OF LONDON TO BE A TRADE UNION AND CERTIFIED IT AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT IN 1960 UNTIL SOME TIME AFTER THE COLLECTIVE AGREEMENT DATED JANUARY 5TH, 1965 WAS EXECUTED, THERE IS NO EVIDENCE TO SUGGEST THAT THE DRY CLEANERS OF LONDON CEASED TO PERFORM ITS FUNCTIONS AS A TRADE UNION. FURTHER, THE EVIDENCE IN NO WAY IMPUGNS THE COLLECTIVE AGREEMENT, THE TERM OF WHICH EXTENDED FROM JANUARY 1ST, 1965, TO DECEMBER 31ST, 1967. WE HAVE NO HESITATION IN SAYING THAT THE EVIDENCE OF THE OPERATIONS OF THE DRY CLEANERS OF LONDON REFLECTS POORLY ON THE QUALITY OF THE REPRESENTATION PROVIDED TO THE EMPLOYEES. NEVERTHELESS, THE EVIDENCE OF THE APPLICANT'S OWN WITNESSES ESTABLISHES THAT UNION DUES HAVE BEEN DEDUCTED AND PAID BY CHEQUE TO AN EMPLOYEE WHO HOLDS HIMSELF OUT AS "BANKER" FOR THE UNION. FURTHER, THE DUES HAVE REGULARLY BEEN DEPOSITED IN A BANK ACCOUNT REGISTERED IN THE NAME OF THE DRY CLEANERS OF LONDON. MOREOVER, FOR THE PAST TWO YEARS, THE MONEY DEPOSITED IN THE ACCOUNT HAS BEEN WITHDRAWN ANNUALLY IN DECEMBER BY THE "BANKER" AND AN EMPLOYEE WHO HOLDS HIMSELF OUT AS BEING PRESIDENT OF THE UNION, BOTH OF WHOM HAVE THE SIGNING AUTHORITY WITH RESPECT TO THE ACCOUNT. IN THESE CIRCUMSTANCES, WE ARE OBLIGED TO FIND THAT THE APPLICANT HAS FAILED TO DISCHARGE THE ONUS UPON IT OF SATISFYING THE BOARD THAT THE DRY CLEANERS OF LONDON HAS CEASED TO BE A TRADE UNION OR THAT THE DRY CLEANERS OF LONDON HAS ABANDONED ITS BARGAINING RIGHTS.

12. WE ACCORDINGLY HAVE NO ALTERNATIVE BUT TO FIND THAT THE DRY CLEANERS OF LONDON IS AN EXISTING TRADE UNION. SINCE NO NOTICE WAS GIVEN TO TERMINATE THE COLLECTIVE AGREEMENT WITH EXPIRY DATE OF DECEMBER 31ST, 1967, WITHIN THE TIME LIMIT PROVIDED BY THE AGREEMENT, WE FURTHER FIND THAT THE AGREEMENT RENEWED ITSELF. THE AGREEMENT THEREFORE IS A BAR TO THE INSTANT APPLICATION.

13. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

DECISION OF BOARD MEMBER E. BOYER:

APRIL 25, 1968.

I DISSENT.

THE EVIDENCE OF PARGETER THAT HE BECAME UNION PRESIDENT IN OCTOBER OF 1967 IS QUITE UNSATISFACTORY. HE COULD NOT EXPLAIN HIMSELF HOW HE BECAME PRESIDENT AND NONE OF THE THREE OTHER EMPLOYEES, INCLUDING KARSCH, WHO WERE CALLED AS WITNESSES WERE EVEN AWARE THAT HE WAS PRESIDENT. FOR THAT MATTER, THE OTHER EMPLOYEES DID NOT KNOW OF ANY OFFICERS OF THE UNION. IN MY VIEW, THERE ARE, IN FACT, NO OFFICERS FOR THE DRY CLEANERS OF LONDON.

WITH RESPECT TO THE DEDUCTION OF UNION DUES, ACCORDING TO THE EVIDENCE OF THE WITNESSES CALLED BY THE APPLICANT, NONE HAD EVER AUTHORIZED THE RESPONDENT TO DEDUCT UNION DUES. FURTHER, WHILE THE EMPLOYEES KNEW MONEY WAS DEDUCTED FROM THEIR WAGES, ONE WITNESS TESTIFIED HE THOUGHT IT WAS FOR A FLOWER FUND. WHILE KARSCH RECEIVED A CHEQUE FROM THE RESPONDENT EACH MONTH OSTENSIBLY FOR UNION DUES, HE WAS NEVER GIVEN A LIST OF THE EMPLOYEES ON WHOSE BEHALF THE DUES ALLEGEDLY WERE DEDUCTED UNTIL JUST PRIOR TO THE SECOND HEARING OF THE BOARD IN THIS MATTER. IN MY OPINION, THE FACT THERE IS STILL A BANK ACCOUNT REGISTERED IN THE NAME OF THE DRY CLEANERS OF LONDON AND TWO EMPLOYEES HAVE SIGNING AUTHORITY WITH RESPECT TO IT IS NOT SUFFICIENT EVIDENCE TO SUPPORT A FINDING THAT THE DRY CLEANERS OF LONDON IS STILL IN EXISTENCE.

ON THE BASIS OF ALL THE EVIDENCE, AND PARTICULARLY IN THE ABSENCE OF OFFICERS, IT IS CLEAR THAT THE DRY CLEANERS OF LONDON CANNOT PERFORM ANY OF THE FUNCTIONS OF A TRADE UNION. ACCORDINGLY, I FIND THE DRY CLEANERS OF LONDON CEASED TO EXIST WELL PRIOR TO THE EXPIRATION OF THE 1965 AGREEMENT. IN THIS CIRCUMSTANCE, THERE WAS, OF COURSE, NO ONE CAPABLE OF GIVING NOTICE ON THE PART OF THE DRY CLEANERS OF LONDON TO TERMINATE THE AGREEMENT. IN ANY EVENT, SINCE THE DRY CLEANERS OF LONDON HAS CEASED TO BE A TRADE UNION, THE COLLECTIVE AGREEMENT DATED JANUARY 5TH, 1965 CANNOT BE A BAR TO THE INSTANT APPLICATION. I THEREFORE WOULD HAVE CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES OF THE RESPONDENT FOR WHOM IT IS SEEKING CERTIFICATION.

14302-67-R: THE DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L. - C.I.O., C.L.C. (APPLICANT) V. COLLINGWOOD SHIPYARDS DIVISION OF CANADIAN SHIPBUILDING AND ENGINEERING LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: J. P. LOUGHRAN AND J. S. BYLES FOR THE APPLICANT, AND B. H. STEWART FOR THE RESPONDENT.

DECISION OF THE BOARD:

APRIL 5, 1968.

1. THE RESPONDENT, HAVING AGREED TO AMEND THE BARGAINING UNIT INITIALLY PROPOSED, IS APPLYING FOR A UNIT DESCRIBED AS "ALL DRAFTSMEN AND APPRENTICE DRAFTSMEN AND BLUEPRINT MACHINE OPERATOR IN THE EMPLOY OF THE RESPONDENT AT COLLINGWOOD SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR".
2. IN THE PAST THE BOARD HAS RECOGNIZED DRAFTSMEN AND THEIR APPRENTICES AS BEING AN APPROPRIATE CRAFT UNIT. THERE IS NO HISTORY, HOWEVER, OF BLUEPRINT MACHINE OPERATORS AS SUCH BEING INCLUDED IN THE CRAFT OR OF THE APPLICANT BARGAINING ON THEIR BEHALF. THE PARTIES AGREED THAT THE OPERATOR HERE IN QUESTION WAS NOT A DRAFTSMAN. THE EVIDENCE WITH RESPECT TO THE BLUEPRINT MACHINE OPERATOR DOES NOT MEET THE REQUIREMENTS OF SECTION 6(2) OF THE ACT, AND THE BOARD IS NOT PREPARED TO INCLUDE IT WITHIN THE DESCRIPTION OF THE CRAFT.
3. THE BOARD THEREFORE FINDS THAT ALL DRAFTSMEN AND APPRENTICE DRAFTSMEN IN THE EMPLOY OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. FOR THE PURPOSE OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT SECTION LEADERS ARE INCLUDED IN THE BARGAINING UNIT.
5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 21ST, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14321-67-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: MARTIN LEVINSON, ENOCH RUST, O. FERGUSON FOR THE APPLICANT, W. S. COOK, J. A. FINLAYSON, R. A. JAMES FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
H. F. IRWIN: APRIL 30, 1968.

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2. THE BOARD FURTHER FINDS THEREFORE THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS MANUFACTURING PLANT AT OWEN SOUND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE RESPONDENT SUBMITTED AT THE HEARING THAT THE APPLICATION WAS PREMATURE BY REASON OF A BUILD UP IN THE WORK FORCE AT ITS PLANT. ACCORDING TO THE EVIDENCE AS OF THE DATE OF THE APPLICATION THERE WERE 179 EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT OF WHICH THE APPLICANT CLAIMED 175 AS MEMBERS. ROBERT JONES, PLANT MANAGER, TESTIFIED THAT HIRING OF EMPLOYEES FOR THE RESPONDENT'S PLANT COMMENCED IN OCTOBER 1967 AND THE PLANT WENT INTO PRODUCTION ON FEBRUARY 8TH, 1968. HE SAID THAT THE CURRENT BUILD UP WAS APPROXIMATELY TWENTY PERSONS EVERY TWO WEEKS AND HE ESTIMATED THAT THE TOTAL WORK FORCE AT THE PLANT WOULD BE 350 - 400 EMPLOYEES IN FIVE OR SIX MONTHS FROM THE DATE OF THE HEARING. ALTHOUGH THIS WAS THE EXPECTATION OF THE RESPONDENT IT DID NOT HAVE A DEFINITE FIRM SCHEDULE FOR THE EMPLOYMENT OF ADDITIONAL PERSONS AND IT WAS ADMITTED THAT THIS WOULD DEPEND SOMEWHAT ON MARKET CONDITIONS FOR ITS PRODUCT. IT IS NOTED THAT THE APPLICANT CLAIMED AS MEMBERS PRACTICALLY ALL OF THE RESPONDENTS' EMPLOYEES AS OF THE DATE OF THE APPLICATION AND THAT THIS NUMBER OF MEMBERS WOULD QUALIFY THE APPLICANT FOR OUTRIGHT CERTIFICATION IN A BARGAINING UNIT CONSISTING OF APPROXIMATELY 315 EMPLOYEES. IN CONSIDERING A BUILD UP SITUATION THE BOARD MUST ASSESS THE RIGHT OF PRESENT EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT TO COLLECTIVE BARGAINING AND THE RIGHT OF FUTURE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE. WITHOUT, HOWEVER, AN ESTABLISHED SCHEDULE FOR FUTURE EMPLOYMENT LEADING TO A DEFINITE TOTAL NUMBER OF EMPLOYEES IN THE BARGAINING UNIT THE BOARD MUST CONSIDER THE REPRESENTATION AS OF THE DATE OF THE APPLICATION. WHERE, AS IN THIS CASE, THE APPLICANT HAS ESTABLISHED PRACTICALLY COMPLETE SUPPORT OF THE PRESENT EMPLOYEES WHO THEMSELVES MAKE UP MORE THAN 50% OF A REASONABLE ESTIMATE OF THE EXPECTED TOTAL WORK FORCE NO PURPOSE WOULD BE SERVED IN DELAYING THE PROCEEDINGS.

4. HAVING REGARD TO THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES THE BOARD FINDS THAT AS OF THE DATE OF THE APPLICATION THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT CONSTITUTED A SUBSTANTIAL AND REPRESENTATIVE PROPORTION OF THE WORK FORCE TO BE EMPLOYED. THE BOARD THEREFORE DENIES THE REQUEST OF THE RESPONDENT TO POSTPONE THE MAKING OF A FINAL DETERMINATION OF THIS MATTER OR TO ORDER A REPRESENTATION VOTE.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE,

WERE MEMBERS OF THE APPLICANT ON MARCH 26TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER O. HODGES: APRIL 30, 1968.

I DISSENT. REASONS FOR MY DISSENT WILL FOLLOW AT A LATER DATE.

14323-67-R: NURSES' ASSOCIATION HOTEL DIEU OF ST. JOSEPH SCHOOL OF NURSING (APPLICANT) v. RELIGIOUS HOSPITALLERS OF ST. JOSEPH'S HOTEL DIEU (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS MESSRS.
H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING:

FOR THE APPLICANT:

D.F.O. HERSEY, MRS. VIRGINIA LORENSON AND
MISS ANNE S. GRIBBEN.

FOR THE RESPONDENT:

B. H. STEWART, ROMAN MANN AND HOMER BACHAND.

DECISION OF THE BOARD: APRIL 23, 1968.

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2. THE APPLICANT IS APPLYING TO BE CERTIFIED FOR A UNIT OF EMPLOYEES OF THE RESPONDENT DESCRIBED AS ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED IN THE RESPONDENT'S SCHOOL OF NURSING AT WINDSOR SAVE AND EXCEPT ASSOCIATE DIRECTORS AND PERSONS ABOVE THAT CLASSIFICATION. THE RESPONDENT SUBMITS THAT THE UNIT PROPOSED BY THE APPLICANT IS NOT APPROPRIATE FOR COLLECTIVE BARGAINING AS IT SHOULD COVER ALL REGISTERED AND GRADUATE NURSES (WITH CERTAIN EXCEPTIONS) AND NOT BE CONFINED TO THOSE ENGAGED IN NURSING INSTRUCTION.

3. THE RESPONDENT SUBMITS THAT THE SCHOOL OF NURSING IS THE SAME AS ANY OTHER DEPARTMENT WITHIN THE HOSPITAL ENTITY. THE SCHOOL IS ENTIRELY INTEGRATED WITH THE HOSPITAL AND IT WOULD BE INAPPROPRIATE TO SUBDIVIDE THE HOSPITAL INTO VARIOUS SEPARATE NURSING UNITS. THE NURSES' BACKGROUND AND WORKING CONDITIONS ARE SIMILAR THROUGHOUT THE HOSPITAL, THE WAGE RATES ARE RELATED AND

THERE IS A COMPLETE MIXTURE IN DAY TO DAY WORK. ALTHOUGH THE HOSPITAL ATTEMPTS TO KEEP EACH DEPARTMENT SEPARATE THERE IS A MUTUAL DEPENDENCE ON EACH DIVISION AND THERE IS A COMMON ADMINISTRATION. FURTHER THERE IS NO HISTORY OF THE APPLICANT REPRESENTING A SMALLER UNIT OF NURSES WITHIN A LARGE TRAINING HOSPITAL AND THEREFORE THE RESPONDENT SUBMITS THAT THE APPLICATION FAILS UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT.

4. THE APPLICANT SUBMITS THAT THE NURSES ENGAGED AS TEACHERS HAVE A DIFFERENT COMMUNITY OF INTEREST FROM THOSE IN NURSING SERVICE AND TAKES ISSUE WITH THE RESPONDENT'S ARGUMENT THAT THE SCHOOL IS MERELY A SEPARATE DEPARTMENT IN THE HOSPITAL, AND STATES THAT THERE IS NO INTERCHANGEABILITY WITH THE NURSES ENGAGED IN NURSING SERVICE AS DIFFERENT QUALIFICATIONS ARE REQUIRED. THE APPLICANT ALSO SUGGESTED THAT IN THE FUTURE THE ADMINISTRATION OF THE SCHOOL MIGHT BE CONSTITUTED IN A DIFFERENT WAY THAN AT PRESENT.

5. THE APPLICANT REQUESTED THAT AN EXAMINER BE APPOINTED BY THE BOARD TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT. THE BOARD DENIES THE APPLICANT'S REQUEST IN THE CIRCUMSTANCES OF THIS MATTER AS WE ARE OF THE OPINION THAT THE ISSUES HAVE BEEN ADEQUATELY STATED TO THE BOARD AND NO PURPOSE WOULD BE SERVED BY FOLLOWING THE PROCEDURE SUGGESTED BY THE APPLICANT.

6. THE BOARD HAS NOT BEFORE GRANTED A CERTIFICATE FOR A UNIT OF EMPLOYEES AS PROPOSED BY THE APPLICANT. THE BOARD, HOWEVER, DID CONSIDER A SIMILAR CIRCUMSTANCE IN THE BROCKVILLE GENERAL HOSPITAL CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, AND STATED AT P. 780:

IT IS OUR OPINION THAT THE TEACHING FUNCTION IN THIS HOSPITAL AT THE PRESENT TIME IS SO CLOSELY INTEGRATED WITH THE NURSING FUNCTION THAT NURSES WHO CARRY OUT THE TEACHING FUNCTION SHOULD BE INCLUDED IN THE SAME BARGAINING UNIT AS NURSES WHO CARRY OUT THE NURSING CARE FUNCTION...

WE CAN SEE NO JUSTIFICATION FOR SPLITTING THE EMPLOYEES OF THE NURSING PROFESSION INTO THREE, RATHER THAN TWO UNITS, ONE OF FULL TIME AND ONE OF PART TIME EMPLOYEES, AS WOULD BE THE CASE IF WE WERE TO ACCEPT THIS HEAD OF THE ARGUMENT OF COUNSEL FOR THE RESPONDENT HOSPITAL WITH REGARD TO THE TEACHERS.

IT WOULD APPEAR IN THE INSTANT CASE THAT THE TEACHING FUNCTION IN THE HOSPITAL IS CLOSELY INTEGRATED WITH THE NURSING CARE FUNCTION AT THE

PRESENT TIME. THERE MAY WELL BE CHANGES MADE IN THE FUTURE AS TO HOW THE SCHOOL OF NURSING IS CONSTITUTED AND ADMINISTERED BUT THE BOARD MUST CONSIDER WHETHER THE PROPOSED BARGAINING UNIT IS PRESENTLY APPROPRIATE. A POSSIBILITY THAT CHANGES MAY BE MADE IN THE FUTURE AS SUGGESTED BY THE APPLICANT WHICH WERE, WE NOTE, VIGOROUSLY DENIED BY THE RESPONDENT, IS NOT A CONSIDERATION FOR THE BOARD TO DEAL WITH AT THIS TIME. WE ARE NOT PERSUADED IN THE INSTANT CASE THAT WE SHOULD NOT FOLLOW THE PRINCIPLES SET OUT IN THE BROCKVILLE GENERAL HOSPITAL CASE [SUPRA].

7. ACCORDINGLY, THE BOARD FINDS THAT ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT WINDSOR ENGAGED IN NURSING CARE OR AS INSTRUCTORS IN THE SCHOOL OF NURSING WITH SUCH EXCEPTIONS AS MIGHT BE PROPERLY APPLICABLE IN SUCH A UNIT, WOULD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

8. ARTICLE III OF THE CONSTITUTION OF THE APPLICANT FILED WITH THE BOARD SETS OUT THAT

"MEMBERSHIP IS OPEN TO ALL REGISTERED AND GRADUATE NURSES WHO ARE EMPLOYED BY THE EMPLOYER ON A FULL TIME OR ON A PART TIME BASIS, AS TEACHERS IN THE SCHOOL OF NURSING, EXCEPT THOSE IN A MANAGERIAL CAPACITY"

CLEARLY THE APPLICANT COULD NOT TAKE INTO MEMBERSHIP ALL OF THOSE PERSONS COMING WITHIN A BARGAINING UNIT DESCRIBED IN PARAGRAPH 5 ABOVE. THE BOARD HAS CONSISTENTLY HELD THAT A TRADE UNION WHICH CANNOT OR WILL NOT ACCEPT INTO MEMBERSHIP ANY PERSON COMING WITHIN THE BARGAINING UNIT SHALL NOT BE CERTIFIED AS BARGAINING AGENT FOR SUCH EMPLOYEES.

9. THE APPLICATION IS THEREFORE DISMISSED.

14389-67-R: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. J. D. CARRIER SHOE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: L. A. MACLEAN AND JACK BRIERLEY FOR THE APPLICANT, W. S. COOK AND J. D. CARRIER FOR THE RESPONDENT, ETHEL BIRLEY FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
R. W. TEAGLE: APRIL 30, 1968.

2. THE APPLICANT IN THIS MATTER HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT. THE APPLICANT IS A CHARTERED LOCAL OF AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA AND ITS CORRECT CHARTERED NAME WOULD APPEAR TO BE AS IN THE STYLE OF CAUSE OF THIS APPLICATION.

3. ALL THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT CONSISTS OF COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT CARDS, WHICH READ AS FOLLOWS:

FUR & LEATHER WORKERS UNION, OF THE AMALGAMATED MEAT
CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA
AFL-CIO, CLC

I HEREBY REQUEST AND ACCEPT MEMBERSHIP IN THE FUR
& LEATHER WORKERS UNION OF THE AMALGAMATED MEAT
CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO,
CLC, AND OF MY OWN FREE WILL HEREBY AUTHORIZE THE FUR
& LEATHER WORKERS UNION, ITS AGENTS AND REPRESENTATIVES,
TO ACT FOR ME AS COLLECTIVE BARGAINING AGENCY IN ALL
MATTERS PERTAINING TO RATES OF PAY, WAGES, HOURS OF
EMPLOYMENT, AND TO ENTER INTO CONTRACTS WITH MY
EMPLOYER COVERING ALL SUCH MATTERS.

DATE 19
(SIGNATURE OF APPLICANT)

\$1.00 INITIATION FEE RECEIVED BY
(SIGNATURE OF COLLECTOR)

I HEREBY CERTIFY THAT I PAID THE ABOVE AMOUNT

DATE , 19
(SIGNATURE OF APPLICANT)

THE REVERSED SIDE OF THE MEMBERSHIP CARD MAKES NO REFERENCE TO THE UNION BUT IS FOR THE PURPOSE OF RECORDING CERTAIN INFORMATION ABOUT THE MEMBER, SUCH AS HIS NAME, ADDRESS, MARITAL STATUS, DATE OF BIRTH, ETC. IT IS TO BE NOTED THAT NONE OF THE MEMBERSHIP OR RECEIPT CARDS MAKE REFERENCE TO "LOCAL 82".

4. THE APPLICANT STATED THAT IT WAS PREPARED TO ADDUCE EVIDENCE THAT WHILE THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA HAS CHARTERED A LOCAL UNION IN MONTREAL, WHICH IS CALLED "FUR WORKERS' UNION, LOCAL - AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA" AND HAS ALSO CHARTERED A LOCAL UNION IN WINNIPEG, WHICH IS CALLED "FUR WORKERS' UNION, LOCAL -

AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA", THE APPLICANT IS THE ONLY CHARTERED LOCAL OF THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA IN CANADA WHICH HAS THE WORD "LEATHER" IN ITS CHARTERED NAME. APPARENTLY, THE APPLICANT'S WITNESSES HAD NO KNOWLEDGE OF THE PRACTICE IN THE UNITED STATES OF AMERICA WITH RESPECT TO THE NAME OF CHARTERED LOCALS OF THE PARENT BODY. THE APPLICANT ACKNOWLEDGED THAT THERE WAS NOTHING TO PREVENT THE PARENT ORGANIZATION FROM CHARTERING OTHER LOCAL UNIONS IN CANADA AND INCLUDE IN THE CHARTERED NAME OF SUCH LOCAL UNIONS THE WORD "LEATHER".

5. THE APPLICANT ARGUED THAT SINCE THE MEMBERSHIP EVIDENCE CONSISTED OF MEMBERSHIP CARDS IN THE FUR & LEATHER WORKERS' UNION OF THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, SUCH MEMBERSHIP EVIDENCE WAS OF NECESSITY MEMBERSHIP EVIDENCE IN THE APPLICANT, EVEN THOUGH NO REFERENCE WAS MADE TO "LOCAL 82" ON THE FACE OF THE MEMBERSHIP CARDS.

6. AT THE HEARING, THE BOARD DIRECTED THE PARTIES TO ASSUME THAT THE FACTS AS SET OUT ABOVE HAD BEEN PROVED AND THE PARTIES WERE DIRECTED TO ADDRESS ARGUMENT WITH RESPECT TO THE SUFFICIENCY OF THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN THIS CASE.

7. THE APPLICANT, FOR REASONS BEST KNOWN TO ITSELF, HAS CHOSEN TO USE MEMBERSHIP CARDS WHICH DO NOT SET OUT THE CORRECT CHARTERED NAME OF THE APPLICANT AND THEREFORE THE APPLICANT MUST ASSUME FULL RESPONSIBILITY FOR THE RESULTS WHICH FLOW FROM ITS PRACTICE IN THIS REGARD. THE DIFFERENCE BETWEEN THE CHARTERED NAME OF THE APPLICANT AND THE NAME APPEARING ON THE MEMBERSHIP CARDS CANNOT BE CLASSIFIED AS A MERE TECHNICAL DEFECT. IT IS RECOGNIZED THAT LOCAL UNIONS OFTEN OMIT PART OF THEIR FULL CHARTERED NAME, FOR THE PURPOSE OF BREVITY, BUT USUALLY THE LOCAL NUMBER IS RETAINED FOR IDENTIFICATION PURPOSES. IF, IN THE INSTANT CASE, THE CARDS WERE FOR MEMBERSHIP IN "LOCAL 82 OF THE AMALGAMATED MEAT CUTTERS", IT COULD NOT BE SERIOUSLY ARGUED THAT CONFUSION WOULD RESULT OR THAT ANYONE MIGHT BE MISLED.

8. WHILE THE APPLICANT'S PRACTICE WITH RESPECT TO ITS MEMBERSHIP CARDS MAY BE WITHIN THE KNOWLEDGE OF PERSONS INTIMATELY CONNECTED WITH THE APPLICANT, WE ARE OF OPINION THAT THE PUBLIC GENERALLY WOULD NOT BE ABLE TO IDENTIFY THE MEMBERSHIP CARDS WITH WHICH WE ARE HERE CONCERNED WITH THE APPLICANT, AND DISTINGUISH SUCH CARDS FROM MEMBERSHIP IN SOME OTHER CHARTERED LOCAL OF THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, OR, FOR THAT MATTER, FROM MEMBERSHIP EVIDENCE IN THE PARENT BODY ITSELF.

9. IT HAS BEEN THE BOARD'S CONSISTENT PRACTICE TO FIND THAT MEMBERSHIP IN ONE LOCAL DOES NOT CONSTITUTE MEMBERSHIP IN ANOTHER LOCAL, AND THAT MEMBERSHIP IN THE PARENT BODY DOES NOT CONSTITUTE MEMBERSHIP IN A LOCAL OF THAT PARENT ORGANIZATION. IN THE MUNICIPALITY OF METROPOLITAN TORONTO CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 573, THE BOARD WAS FACED WITH A SIMILAR PROBLEM AS WE

HAVE IN THE INSTANT CASE. IN THAT CASE, THE APPLICANT WAS CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101, HOWEVER, THE MEMBERSHIP DOCUMENTS FILED BY THE APPLICANT WAS FOR MEMBERSHIP IN "CANADIAN UNION OF OPERATING ENGINEERS". IN THAT CASE, THE BOARD STATED, IN PART, AS FOLLOWS:

... HOWEVER, THERE IS NOTHING CONTAINED ON THE FACE OF THE APPLICATION CARDS OR THE RECEIPT CARDS WHICH INDICATES THAT THE EMPLOYEES INTENDED TO BECOME MEMBERS OF LOCAL 101, THE APPLICANT IN THIS CASE.

IT IS NOT THE BOARD'S USUAL PRACTICE TO TREAT EVIDENCE OF MEMBERSHIP IN THE PARENT BODY AS MEMBERSHIP EVIDENCE IN A PARTICULAR LOCAL OF THAT PARENT, WHERE THE LOCAL IS NOT REFERRED TO IN EITHER THE APPLICATION OR THE RECEIPT CARD. (SEE SHELL CANADA LIMITED CASE, BOARD FILE 13596-67-R, SEPTEMBER 18, 1967, MILSON FLOORS LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 419, AND METROPOLITAN LIFE INSURANCE COMPANY CASE, BOARD FILE 12779-66-R, AUGUST 29, 1967).

10. SINCE THE MEMBERSHIP EVIDENCE FILED IN THIS CASE DOES NOT IDENTIFY THE APPLICANT WITH SUFFICIENT PARTICULARITY SO THAT IT COULD BE SAID THAT A PERSON SIGNING SUCH MEMBERSHIP CARD HAS UNEQUIVOCALLY SIGNIFIED HIS INTENTION OF JOINING THE APPLICANT UNION RATHER THAN THE PARENT BODY OR SOME OTHER CHARTERED LOCAL OF THE PARENT BODY, WE MUST ACCORDINGLY FIND THAT THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IS DEFECTIVE TO SUCH A SUBSTANTIAL DEGREE THAT NO EFFECT CAN BE GIVEN TO IT. IN THIS REGARD, WE ADOPT THE LANGUAGE USED BY THE BOARD IN THE LICARI & SONS CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 57, WHEREIN THE BOARD STATED, "IT IS INCUMBENT, THEREFORE, UPON UNIONS TO BE MOST CIRCUMSPECT WITH THE DOCUMENTARY EVIDENCE THEY FILE AND TO MAKE SURE THAT IT IS ACCURATE IN ALL RESPECTS."

11. WE THEREFORE FIND THAT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE CANNOT BE CONSIDERED AS EVIDENCE OF MEMBERSHIP IN THE APPLICANT, AND THE APPLICATION MUST ACCORDINGLY FAIL.

12. THE BOARD THEREFORE FINDS ON ALL THE EVIDENCE BEFORE IT, AND ASSUMING THAT THE APPLICANT HAS PROVEN THE FACTS AS OUTLINED ABOVE, THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN ANY BARGAINING UNIT THE BOARD MIGHT DEEM TO BE APPROPRIATE, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 5TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER E. BOYER: APRIL 30, 1968.

I DISSENT. IT IS MY VIEW THAT THE APPLICANT'S CARDS IN THIS CASE ARE IN A FORM WHICH CAN BE DISTINGUISHED FROM THE OBJECTIONABLE CARDS WITH WHICH THE BOARD DEALT IN THE CASES REFERRED TO BY THE MAJORITY. I WOULD THEREFORE HAVE GIVEN FULL EFFECT TO THE APPLICANT'S MEMBERSHIP EVIDENCE IN THIS CASE.

14423-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. T. & D. CONTRACTING COMPANY LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: APRIL 18, 1968.

. . .

3. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE APPLICANT FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY. THE APPLICANT ALSO FILED SIX COMBINATION APPLICATIONS AND RECEIPTS. THE COMBINATION APPLICATIONS FOR MEMBERSHIP ARE SIGNED BY THE EMPLOYEES AND THE RECEIPTS ARE COUNTERSIGNED AND INDICATE THAT A PAYMENT OF AT LEAST \$1.00 HAS BEEN MADE WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THE APPLICATION. THE MONEY WAS COLLECTED BY ONE PERSON. THE APPLICANT ALSO FILED SEVEN CERTIFICATES OF MEMBERSHIP. THE CERTIFICATES OF MEMBERSHIP PROVIDE AS FOLLOWS:

"I THE UNDERSIGNED HEREBY CERTIFY THAT:

I AM A MEMBER OF LOCAL UNION.....I.H.C.B. & C.L.U. OF A.

MY MONTHLY DUES OF \$.....ARE PAID FOR THE MONTH OF.....196.

I BECAME AN INITIATED MEMBER.....

DAY MONTH YEAR

I AM WILLING THAT LOCAL....., INTERNATIONAL HOD CARRIERS',
BUILDING AND COMMON LABORERS' UNION OF AMERICA, ITS
OFFICERS OR NEGOTIATION COMMITTEE MEMBERS MAY AND ARE
HEREBY AUTHORIZED TO REPRESENT ME AND ACT ON MY BEHALF
REGARDING WAGES, HOURS OF LABOUR, OR ANY CONDITION OF
EMPLOYMENT.

.....SIGN HERE
MEMBER'S SIGNATURE

DATED AT.....THIS.....DAY OF.....196.

CHECKED AND CERTIFIED CORRECT.....
SIGNATURE OFFICE HELD"
OF OFFICER

ON ALL OF THE SEVEN CERTIFICATES OF MEMBERSHIP THE ONLY PARTS THAT
HAVE BEEN FILLED IN ARE THE MONTH FOR WHICH DUES WERE PAID AND THE
SIGNATURE OF THE MEMBER. THIS EVIDENCE OF MEMBERSHIP DOES NOT CON-
FORM TO THE BOARD'S REQUIREMENTS CONCERNING CERTIFICATES OF MEMBER-
SHIP.

5. ALTHOUGH, THE RESPONDENT FAILED TO FILE A REPLY, A LIST OF
EMPLOYEES AND SPECIMEN SIGNATURES WITHIN THE TIME FIXED IN ACCORD-
ANCE WITH THE LABOUR RELATIONS ACT AND THE BOARD'S RULES OF PROCE-
DURE, THE FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS,
CONSTRUCTION INDUSTRY, SUBMITTED BY THE APPLICANT ALLEGES THAT THERE
WERE TWENTY PERSONS IN THE BARGAINING UNIT.

6. THE EVIDENCE OF MEMBERSHIP WHICH IS A. EPTABLE TO THE BOARD
IS WITH RESPECT TO SIX OUT OF THE TWENTY EMPLOYEES IN THE BARGAINING
UNIT. THE BOARD, THEREFORE, IS SATISFIED ON THE BASIS OF ALL THE
EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOY-
EES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLI-
CATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 17, 1968, THE
TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD
DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE
THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION
7(1) OF THE SAID ACT.

7. THIS APPLICATION IS ACCORDINGLY DISMISSED.

14424-68-R: WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION, LOCAL 551
A.F.L. - CIO (APPLICANT) V. PRESTIGE DRY WALL LTD. (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS E. BOYER
AND R. W. TEAGLE.

DECISION OF THE BOARD:

APRIL 18, 1968.

1. THE APPLICANT FILED ITS CHARTER FROM THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION DATED MAY 13, 1957. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
2. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
3. THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT CONSISTS OF THREE DUES BOOKS. ONE DUES BOOK IS NOT SIGNED AND ACCORDINGLY IS NOT ACCEPTABLE TO THE BOARD AS EVIDENCE OF MEMBERSHIP IN A TRADE UNION. SEE DECISION OF THE BOARD DATED APRIL 4, 1968, IN THE S. & G. MASONRY CASE, BOARD FILE 14333-67-R. IN ADDITION, ALL OF THE DUES BOOKS INDICATE MEMBERSHIP IN LOCALS OF THE WOOD, WIRE AND METAL LATHERS INTERNATIONAL UNION OTHER THAN THE APPLICANT. THIS IS THE ONLY DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED WITH THE BOARD. THERE IS THUS NO EVIDENCE OF MEMBERSHIP REFERABLE TO THE APPLICANT TRADE UNION. REFERENCE IS MADE TO MILSON FLOORS LIMITED CASE, O.L.R.B. MONTHLY REPORTS SEPTEMBER 1966, P. 419.
4. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THIS APPLICATION IS DISMISSED.

INDEXED ENDORSEMENTS - TERMINATION

13864-67-R: FRANCOIS CYR (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (RESPONDENT) V. (UNI-FORM BUILDERS LIMITED)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: L. K. FERRIER FOR THE APPLICANT, J. B. WATERMAN FOR THE RESPONDENT.

DECISION OF THE BOARD:

APRIL 11, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 96(1) OF THE LABOUR RELATIONS ACT.
2. THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF UNI-FORM BUILDERS LIMITED IN THE COUNTIES OF CARLETON (EXCEPTING THEREFROM MARLBOROUGH TOWNSHIP), RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. ON NOVEMBER 8TH, 1967, THE DATE THIS APPLICATION WAS MADE, THE APPLICANT WAS EMPLOYED AS A CONSTRUCTION LABOURER BY UNI-FORM BUILDERS LIMITED ON THE GLEN TAY SCHOOL PROJECT, NEAR PERTH, IN THE COUNTY OF LANARK. IT IS THEREFORE

READILY APPARENT THAT THE APPLICANT WAS NOT AN EMPLOYEE OF THE COMPANY IN THE GEOGRAPHIC AREA OF THE BARGAINING UNIT REPRESENTED BY THE RESPONDENT ON THE DATE THIS APPLICATION WAS MADE.

3. SECTION 96(1) OF THE ACT READS AS FOLLOWS:

IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITHIN SIX MONTHS AFTER ITS CERTIFICATION, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE MAY APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

4. SINCE THIS APPLICATION WAS MADE UNDER SECTION 96(1) OF THE ACT, WHICH IS ONE OF THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT, THE BOARD'S PRACTICES AND POLICIES PERTAINING TO APPLICATIONS BROUGHT UNDER THE CONSTRUCTION INDUSTRY SECTIONS APPLY. IT HAS BEEN THE CONSISTENT PRACTICE OF THE BOARD IN APPLICATIONS UNDER THE CONSTRUCTION INDUSTRY SECTIONS TO DETERMINE THE COMPOSITION OF THE BARGAINING UNIT, INCLUDING THE QUESTION WHETHER AN EMPLOYEE IS INCLUDED IN THE BARGAINING UNIT, AS OF THE DATE THE APPLICATION IS MADE, AND TO FREEZE THE LIST OF EMPLOYEES OF THE COMPANY AS OF THAT DATE. IF A PERSON IS NOT EMPLOYED IN THE BARGAINING UNIT ON THE DATE AN APPLICATION FOR CERTIFICATION IS MADE UNDER THE CONSTRUCTION INDUSTRY SECTIONS, HE IS NOT CONSIDERED TO BE AN EMPLOYEE OF THE COMPANY IN THE BARGAINING UNIT FOR THE PURPOSE OF DETERMINING THE UNION'S MEMBERSHIP POSITION. IN THIS REGARD, SEE KEYSTONE CONTRACTORS LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1966, P. 821. FOR SIMILAR REASONS, IF A PERSON IS NOT EMPLOYED IN THE BARGAINING UNIT ON THE DATE AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS IS MADE UNDER SECTION 96(1) OF THE ACT, HE IS NOT CONSIDERED TO BE AN EMPLOYEE OF THE COMPANY IN THE BARGAINING UNIT AS REQUIRED BY SECTION 96(1). (SEE ALSO HOWARD S CLARK CONSTRUCTION CASE DECISION, BOARD FILE 14392-67-R, APRIL 9, 1968.)

5. SINCE THE APPLICANT WAS NOT AN EMPLOYEE OF UNI-FORM BUILDERS LIMITED IN THE GEOGRAPHIC AREA DESCRIBED IN THE CERTIFICATE, ON THE DATE THIS APPLICATION WAS MADE, THE APPLICANT WAS NOT AN EMPLOYEE OF THE COMPANY IN THE BARGAINING UNIT AS REQUIRED BY SECTION 96(1) OF THE ACT AND THEREFORE HAD NO STATUS TO BRING THIS APPLICATION UNDER SECTION 96(1).

6. THIS APPLICATION IS THEREFORE DISMISSED.

7. THE BOARD'S DECISION WITH RESPECT TO THE STATUS OF THE APPLICANT IN THIS MATTER WILL NOT PREJUDICE ANY FUTURE APPLICATION FOR TERMINATION BY ANY EMPLOYEE IN THE BARGAINING UNIT.

14329-67-R: LAWRENCE BRENNAN (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1988 (RESPONDENT) V. HOWARD S. CLARK CONSTRUCTION (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: LAWRENCE BRENNAN FOR THE APPLICANT;
ALBERT LALONDE FOR THE RESPONDENT; AND HOWARD S. CLARK FOR THE
INTERVENER.

DECISION OF THE BOARD: APRIL 9, 1968.

1. THIS IS AN APPLICATION UNDER SECTION 45A OF THE LABOUR RELATIONS ACT WHICH PROVIDES AS FOLLOWS:

45A-(1) WHERE AN EMPLOYER AND A TRADE UNION THAT HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES OF THE EMPLOYER ENTER INTO A COLLECTIVE AGREEMENT, THE BOARD MAY, UPON THE APPLICATION OF ANY EMPLOYEE IN THE BARGAINING UNIT OR OF A TRADE UNION REPRESENTING ANY EMPLOYEE IN THE BARGAINING UNIT, DURING THE FIRST YEAR OF THE PERIOD OF TIME THAT THE FIRST COLLECTIVE AGREEMENT BETWEEN THEM IS IN OPERATION, DECLARE THAT THE TRADE UNION WAS NOT, AT THE TIME THE AGREEMENT WAS ENTERED INTO, ENTITLED TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT.

2. THE COLLECTIVE AGREEMENT IN QUESTION IN THIS CASE BETWEEN THE RESPONDENT AND THE INTERVENER WAS SIGNED IN OR ABOUT THE FIRST WEEK OF SEPTEMBER, 1967, THE EFFECTIVE DATE FOR THE AGREEMENT BEING SEPTEMBER 1, 1967. THE AGREEMENT PROVIDES IN CLAUSE 1 THAT THE INTERVENER RECOGNIZES THE RESPONDENT AS THE EXCLUSIVE BARGAINING AGENT FOR ALL CARPENTERS AND LABOURERS, INCLUDING FOREMEN LEADERS, LAY-OUT MEN AND APPRENTICES IN THE EMPLOY OF THE INTERVENER "WORKING IN THE AREA" OF THE RESPONDENT TRADE UNION. THE AGREEMENT ALSO PROVIDES AS FOLLOWS:

IT IS AGREED BY THE PARTIES OF THE FIRST AND SECOND PART THAT THIS COLLECTIVE AGREEMENT WILL BE AS OF SEPT. 1ST, 1967 EFFECTIVE. EXCLUDING THE CHANGE HOUSE AND ARTIFICIAL ICE RINK AT THE ONTARIO HOSPITAL.

3. THE EVIDENCE ESTABLISHES THAT AT THE TIME THE AGREEMENT WAS SIGNED THE RESPONDENT UNION CLAIMED TO REPRESENT ONLY ONE EMPLOYEE OF THE INTERVENER. SUCH PERSON WAS A CARPENTER WHO WAS EMPLOYED ON THE ONTARIO HOSPITAL PROJECT WHICH WAS THE ONLY PROJECT WHICH THE INTERVENER HAD AT THAT TIME OR HAS HAD SINCE SEPTEMBER, 1967. THE EVIDENCE

FURTHER ESTABLISHES THAT THE EMPLOYEE IN QUESTION, THE APPLICANT IN THE PRESENT CASE, HAS WORKED ONLY AT THE PROJECT OR IN THE INTERVENER'S SHOP. THE EVIDENCE DOES NOT ESTABLISH WHERE THE APPLICANT WAS WORKING ON THE DATE OF THE MAKING OF THIS APPLICATION, NAMELY, MARCH 19TH, THAT IS, WHETHER IN THE SHOP OR AT THE PROJECT. IF HE WAS WORKING AT THE PROJECT, THEN ON THE DATE OF THE MAKING OF THE APPLICATION HE WAS NOT AN EMPLOYEE IN THE BARGAINING UNIT SINCE THE ONTARIO HOSPITAL PROJECT IS NOT COVERED BY THE COLLECTIVE AGREEMENT. IF HE IS NOT AN EMPLOYEE IN THE BARGAINING UNIT, HE WOULD NOT BE ENTITLED TO APPLY UNDER SECTION 45A. ON THE OTHER HAND, IF HE WAS WORKING IN THE SHOP ON THE DATE OF THE MAKING OF THIS APPLICATION, THEN PRESUMABLY HE WAS AN EMPLOYEE COVERED BY THE AGREEMENT IN QUESTION AND ENTITLED TO MAKE THE APPLICATION.

4. HOWEVER, THE EVIDENCE ESTABLISHES THAT AT THE TIME THE AGREEMENT WAS SIGNED THE APPLICANT WAS WORKING ON THE ONTARIO HOSPITAL PROJECT. SUCH PROJECT, AS NOTED ABOVE, WAS NOT COVERED BY THE COLLECTIVE AGREEMENT, YET THE ONLY EVIDENCE OF REPRESENTATION SUBMITTED BY THE RESPONDENT TRADE UNION WAS WITH RESPECT TO THIS EMPLOYEE. THERE IS THUS NO EVIDENCE BEFORE THE BOARD THAT THE RESPONDENT REPRESENTED ANY EMPLOYEES OF THE INTERVENER IN THE BARGAINING UNIT DESCRIBED IN THE COLLECTIVE AGREEMENT AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO.

5. UNDER THE PROVISIONS OF SECTION 45A, THERE IS AN INITIAL ONUS ON THE APPLICANT TO ESTABLISH THAT HE IS A PERSON ENTITLED TO MAKE THE APPLICATION, THAT IS, AN EMPLOYEE IN THE BARGAINING UNIT. IF HE SUCCEEDS IN DOING THAT, THEN THE ONUS, UNDER SUBSECTION 3, IS ON THE PARTIES TO THE COLLECTIVE AGREEMENT TO ESTABLISH THAT THE TRADE UNION REPRESENTED THE EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE AGREEMENT WAS ENTERED INTO. IN THIS CASE THE APPLICANT HAS FAILED TO MEET ITS ONUS, AS HAS THE TRADE UNION WHICH IS SEEKING TO UPHOLD THE COLLECTIVE AGREEMENT.

6. IN THE RESULT, WE HAVE NO ALTERNATIVE BUT TO DISMISS THE APPLICATION. IN THESE CIRCUMSTANCES THERE IS NO NEED FOR THE BOARD TO CONSIDER THE EFFECT ON THE APPLICATION OF THE FACT THAT THE SAME FIRM OF LAWYERS ACTED FOR BOTH THE APPLICANT AND THE INTERVENER. NOR IS IT NECESSARY TO CONSIDER THE QUESTION WHETHER THE RESPONDENT REPRESENTED EMPLOYEES, HAVING REGARD TO THE FACT THAT, AT THE TIME THE AGREEMENT WAS SIGNED, THE INTERVENER PAID THE BACK DUES OF THE APPLICANT TO THE RESPONDENT WITHOUT CONSULTING THE APPLICANT.

7. THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENT - SUCCESSOR STATUS

14198-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. TRAVELADE MOTORS LIMITED (RESPONDENT) V. SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644, C.L.C. (PRECESSOR TRADE UNION) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: CAL FREESE FOR THE APPLICANT, NO ONE FOR THE
RESPONDENT, NO ONE FOR THE PREDECESSOR TRADE UNION, AND RANDY THOMAS
FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: APRIL 30, 1968.

1. THE APPLICANT HAS APPLIED TO THE ONTARIO LABOUR RELATIONS BOARD UNDER SECTION 47 OF THE ACT FOR A DECLARATION THAT INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF ITS PREDECESSOR, SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644, C.L.C., BY REASON OF A MERGER, AMALGAMATION OF TRANSFER OF JURISDICTION.
2. THE REPRESENTATIVE OF THE GROUP OF EMPLOYEES, OBJECTORS, ADVISED THE BOARD AT THE HEARING THAT HE RAISED NO OBJECTION TO THE PROPRIETY OF THE PROCEDURES UNDER SECTION 47 NOR THE EVIDENCE FILED BY THE APPLICANT AND THE PREDECESSOR TRADE UNION IN RESPECT THERETO. THE OBJECTION IS BASED UPON THE BELIEF OF THE OBJECTORS THAT THE APPLICANT UNION WOULD NOT PROPERLY REPRESENT THEM SINCE THEY ARE NOT MACHINIST OR AEROSPACE WORKERS. IT WAS ALSO FELT THAT THEY WOULD LOSE CERTAIN AUTONOMY IF THE APPLICATION SUCCEEDED.
3. IN THE OPINION OF THE BOARD THE NATURE OF THE OBJECTIONS RAISED BY THE GROUP OF OBJECTORS IS NOT SUCH AS TO SET UP ANY ISSUE UPON WHICH THE BOARD COULD PROPERLY BE CALLED UPON TO ADJUDICATE IN THIS APPLICATION, AND THE OBJECTIONS ARE THEREFORE DISMISSED.
4. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD FINDS AND ACCORDINGLY DECLARES, PURSUANT TO SECTION 47(1) OF THE LABOUR RELATIONS ACT, THAT THE APPLICANT BY REASON OF A MERGER OR AMALGAMATION OR TRANSFER OF JURISDICTION HAS ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644, C.L.C., WHICH WAS THE BARGAINING AGENT OF A UNIT OF EMPLOYEES OF THE RESPONDENT DEFINED IN A COLLECTIVE AGREEMENT BETWEEN TRAVELADE MOTORS LIMITED AND SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644, CANADIAN LABOUR CONGRESS, EFFECTIVE FROM JULY 1ST, 1967, TO JUNE 30TH, 1970, AND YEARLY THEREAFTER SUBJECT TO NOTICE.

INDEXED ENDORSEMENTS - PROSECUTION

14219-67-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V.
WELPORT INVESTMENTS LIMITED (RESPONDENT)

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT HEARING: H. BEKERMANN AND R. LIVINGSTONE FOR THE APPLICANT, AND WARREN K. WINKLER FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 10, 1968.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION. THE OFFENCE ALLEGED IS THAT THE RESPONDENT CONTRAVENED SECTION 12 OF THE LABOUR RELATIONS ACT IN THAT IT HAS FAILED TO BARGAIN IN GOOD FAITH, AND TO MAKE EVERY REASONABLE EFFORT TO EFFECT A COLLECTIVE AGREEMENT.

2. THE APPLICANT SET OUT, AS THE MATERIAL FACTS UPON WHICH IT RELIED, THE FOLLOWING:

"AT A CONCILIATION MEETING ON THE ABOVE DATE MR. FOX, AGENT OF THE RESPONDENT STATED TO THE CONCILIATION OFFICER THAT HE, MR. FOX HAD NO AUTHORITY TO NEGOTIATE ANY SETTLEMENT WITH THE CANADIAN UNION OF OPERATING ENGINEERS."

3. AT THE HEARING THE RESPONDENT TOOK THE POSITION THAT SECTION 83 OF THE ACT PROHIBITS THE INTRODUCTION OF EVIDENCE IN SUPPORT OF THE PARTICULARS GIVEN BY THE APPLICANT AS SUPPORTING ITS ALLEGATION. THE APPLICANT CONCEDED THAT SECTION 83 CONSTITUTES AN EFFECTIVE BAR TO THE INTRODUCTION OF THE PARTICULARS IN THE PRECISE FORM IN WHICH THEY WERE SET OUT. IT PROPOSED TO AMEND THE PARTICULARS AND TO CALL WITNESSES THEN AND THERE TO ESTABLISH THE ALLEGED OFFENCE. THE RESPONDENT, HOWEVER, OBJECTED TO PROCEEDING ON THE BASIS OF THE FRESH PARTICULARS, SINCE TO DO SO WOULD NECESSITATE THE PREPARATION OF A NEW DEFENCE INVOLVING FACTORS WITH WHICH HE WAS UNFAMILIAR.

4. IN OUR VIEW, THE CONSEQUENCES OF THE FAILURE OF THE APPLICANT TO TAKE COGNIZANCE OF THE PROVISIONS OF SECTION 83 OF THE ACT IN THE PREPARATION OF HIS PARTICULARS CANNOT BE PERMITTED TO OPERATE TO THE PREJUDICE OF THE RESPONDENT, PARTICULARLY BECAUSE OF THE CRIMINAL OR QUASI-CRIMINAL ASPECTS OF THE PROCEEDINGS WHERE PRECISION IS ESPECIALLY TO BE DESIRED. IT MIGHT ALSO BE NOTED THAT BECAUSE OF THE CRIMINAL ASPECTS INVOLVED THE RESPONDENT IS NOT BOUND TO REVEAL HIS DEFENCE IN ADVANCE, SO THAT NOTHING MAY PROPERLY BE SAID TO TURN UPON THE FACT THAT THE APPLICANT WAS UNAWARE OF THE DEFENCE.

5. HAVING IN MIND THE NATURE OF THESE PROCEEDINGS, THE BOARD DISMISSES THE APPLICATION.

14260-67-U: NORTH YORK TOWNSHIP CIVIC EMPLOYEES UNION, No. 94
(APPLICANT) v. THE CORPORATION OF THE BOROUGH OF NORTH YORK
(RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: MARTIN LEVINSON, JAMES ANDERSON AND
J. BROWN FOR THE APPLICANT, W. STEWART ROGERS, Q.C., AND T.
MURPHY FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
O. HODGES: APRIL 23, 1968.

. . .

2. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION
AGAINST THE RESPONDENT FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN
COMMITTED:

THAT THE SAID RESPONDENT DID CONTRAVENE
SECTION 12 OF THE LABOUR RELATIONS ACT
IN THAT ON AND AFTER MARCH 7TH, 1968, THE
RESPONDENT DID REFUSE TO BARGAIN IN GOOD
FAITH AND MAKE EVERY REASONABLE EFFORT TO
MAKE A COLLECTIVE AGREEMENT.

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER H. F. IRWIN: APRIL 23, 1968.

I DISSENT FOR THE REASONS GIVEN BY ME IN THE APPLICATION FOR
CONSENT TO PROSECUTE BETWEEN THE APPLICANT AND THE NORTH YORK TOWN-
SHIP CIVIC EMPLOYEES' UNION, LOCAL 94, BOARD FILE No. 14290-67-U.

14290-67-U: THE CORPORATION OF THE BOROUGH OF NORTH YORK (APPLICANT)
V. THE NORTH YORK TOWNSHIP CIVIC EMPLOYEES' UNION, LOCAL 94
(RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: W. STEWART ROGERS, Q.C., AND T. MURPHY FOR
THE APPLICANT, MARTIN LEVINSON JAMES ANDERSON AND J. BROWN FOR THE
RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES:
APRIL 23, 1968.

1. THE APPLICANT HAS APPLIED FOR CONSENT TO PROSECUTE THE RESPONDENT
AND HAS ALLEGED THAT THE RESPONDENT HAS CONTRAVENED SECTION 12 OF THE

LABOUR RELATIONS ACT IN THAT THE RESPONDENT HAS NOT BARGAINED IN GOOD FAITH AND MADE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

2. THE FACTS OF THIS CASE ARE AS FOLLOWS. THE RESPONDENT AND THE APPLICANT AND THE APPLICANT'S PREDECESSOR HAVE BEEN PARTIES TO SUCCESSIVE COLLECTIVE AGREEMENTS FOR SOME CONSIDERABLE TIME. THE BARGAINING WHICH LED TO THE SIGNING OF THE COLLECTIVE AGREEMENT WHICH EXPIRED ON DECEMBER 31ST, 1967, AND ALL EARLIER COLLECTIVE AGREEMENTS TOOK PLACE IN PRIVATE. FOLLOWING NOTICE SERVED UPON THE APPLICANT BY THE RESPONDENT TO OPEN NEGOTIATIONS FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT WHICH WAS TO EXPIRE ON DECEMBER 31ST, 1967, THE APPLICANT, AT A COUNCIL MEETING HELD ON FEBRUARY 12TH, 1968, PASSED THE FOLLOWING RESOLUTION:

15. NORTH YORK CIVIC EMPLOYEES UNION LOCAL 94
C.U.P.E. (15-5)

COUNCIL HAD BEFORE IT A MEMORANDUM FROM THE MAYOR (FEBRUARY 12, 1968) ADVISING THAT THE EXECUTIVE OF LOCAL 94 HAS INDICATED ITS NEGOTIATING COMMITTEE IS PREPARED TO MEET FURTHER WITH BOARD OF CONTROL FOR PURPOSES OF NEGOTIATIONS AND THE BOARD HAS CONCLUDED, NOTWITHSTANDING PREVIOUS POLICY TO THE CONTRARY, THAT THERE IS NO PRINCIPLE WHICH REQUIRES OR SUGGESTS THAT NEGOTIATIONS WITH UNIONS BE CARRIED ON IN PRIVATE, OTHER THAN DURING PUBLIC NEGOTIATIONS EITHER PARTY MIGHT WISH TO WITHDRAW TO DISCUSS ITS POSITION PRIVATELY, AND THAT ACCORDINGLY IT IS DESIROUS TO OBTAIN CONCURRENCE OF COUNCIL IN THE BOARD'S POSITION.

IT WAS MOVED BY MR. MCGIVERN, SECONDED BY MR. CASSELS, THAT LEAVE BE GRANTED TO PRESENT TO COUNCIL THE MATTER CONTAINED IN THE MEMORANDUM FROM THE MAYOR DATED FEBRUARY 12, 1968. MOTION CARRIED.

FOLLOWING CONSIDERATION OF THE FOREGOING MATTER, IT WAS MOVED BY MR. WILLIAMS, SECONDED BY MR. MCGIVERN, THAT THE BOARD OF CONTROL, AS A NEGOTIATING COMMITTEE, BE INSTRUCTED TO CONDUCT ITS NEGOTIATIONS WITH THE UNION IN PUBLIC IN THE SAME MANNER AS IT WOULD AT A REGULAR MEETING OF THE BOARD OF CONTROL. MOTION CARRIED.

3. AT A SUBSEQUENT MEETING OF COUNCIL HELD ON FEBRUARY 29TH, 1968, THE APPLICANT PASSED A RESOLUTION WHICH READS AS FOLLOWS:

FOLLOWING DISCUSSION ON THE BUDGET ESTIMATES IT WAS MOVED BY MR. WILLIAMS, SECONDED BY MR. BOOTH THAT COUNCIL GO INTO COMMITTEE OF THE WHOLE WITH MAYOR SERVICE IN THE CHAIR. MOTION CARRIED.

THE COMMITTEE OF THE WHOLE ROSE. IT WAS MOVED BY MR. SERVICE, SECONDED BY MR. WILLIAMS THAT COUNCIL CONFIRM ITS DECISION MADE ON FEBRUARY 12TH, I.E. "THAT THE BOARD OF CONTROL, AS A NEGOTIATING COMMITTEE, BE INSTRUCTED TO CONDUCT ITS NEGOTIATIONS WITH THE UNION IN PUBLIC IN THE SAME MANNER AS IT WOULD AT A REGULAR MEETING OF THE BOARD OF CONTROL."

MR. BOOTH, SECONDED BY MR. YUILL MOVED IN AMENDMENT THAT THE PREVIOUS MOTION BE AMENDED BY ADDING AT THE END THEREOF THE WORDS "AND TO MEET IN PRIVATE WHERE MUTUALLY AGREED UPON". THE AMENDMENT WAS DECLARED BY THE CHAIR TO BE LOST. THE MOTION MOVED BY MR. SERVICE, SECONDED BY MR. WILLIAMS CARRIED
ABSENT: ROGERS, BLACK, SUTHERLAND, CASSELS, LUND.

4. WHILE THE RESPONDENT WAS PREPARED TO MEET AND BARGAIN PRIVATELY WITH THE APPLICANT, THE RESPONDENT OBJECTED TO BARGAINING WITH THE APPLICANT AT A REGULAR MEETING OF BOARD OF CONTROL AT WHICH THE PUBLIC AND THE PRESS WERE IN ATTENDANCE. ACCORDINGLY, SINCE THE APPLICANT HAD IMPOSED THE CONDITION OF CONDUCTING "ITS NEGOTIATIONS WITH THE UNION IN PUBLIC IN THE SAME MANNER AS IT WOULD AT A REGULAR MEETING OF THE BOARD OF CONTROL", THE RESPONDENT UNION REFUSED TO CONTINUE TO BARGAIN WITH THE APPLICANT SO LONG AS THE APPLICANT INSISTED ON THAT CONDITION.

5. IT WAS THE APPLICANT'S POSITION THAT THE APPLICANT IS A PUBLIC BODY REPRESENTING THE TAXPAYERS OF THE BOROUGH OF NORTH YORK AND USUALLY HELD MEETINGS OF THE BOARD OF CONTROL IN PUBLIC. SINCE THE BOARD OF CONTROL HAD BEEN APPOINTED TO ACT AS A NEGOTIATING COMMITTEE, IT WAS THEREFORE ENTITLED TO INSIST THAT SUCH MEETINGS OF THE BOARD OF CONTROL, AS NEGOTIATING COMMITTEE, BE HELD IN PUBLIC PURSUANT TO THE RESOLUTION PASSED BY COUNCIL.

6. THE ISSUE IN THIS MATTER MAY BE BRIEFLY SUMMARIZED IN THE FOLLOWING MANNER. DOES THE RESPONDENT HAVE THE RIGHT TO INSIST ON PRIVATE RATHER THAN PUBLIC BARGAINING MEETINGS WITH THE APPLICANT WITHOUT BEING SAID TO BE ACTING CONTRARY TO THE PROVISIONS OF SECTION 12 OF THE LABOUR RELATIONS ACT, WHICH REQUIRES THE PARTIES TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT?

7. THE QUESTION OF PUBLIC AS OPPOSED TO PRIVATE BARGAINING MEETINGS HAS NEVER PREVIOUSLY BEEN RAISED BEFORE THIS BOARD AND OUR RESEARCH INTO THE DECISIONS OF OTHER JURISDICTIONS HAS NOT DISCLOSED

ANY DECISION DIRECTLY IN POINT. HOWEVER, CERTAIN CASES HAVE BEEN DECIDED BY THE NATIONAL LABOUR RELATIONS BOARD OF THE UNITED STATES WHICH THROW SOME LIGHT ON THE PROBLEM.

8. IN THE C. B. COTTRELL & SONS COMPANY CASE, (1941) 34 NLRB 457, 462-463, THE NLRB STATED AS FOLLOWS:

WE FIND, AS DID THE TRIAL EXAMINER, THAT THE RESPONDENT, BY BRINGING 12 OF ITS EMPLOYEES INTO THE CONFERENCE OF JANUARY 4 WITHOUT THE KNOWLEDGE OR CONSENT OF THE UNION AND PERMITTING THEM TO REMAIN OVER THE PROTEST OF THE UNION, AND BY READING A STATEMENT OF POLICY IMPLYING THAT UNIONS WERE TROUBLEMAKERS AND STATING THAT EMPLOYERS WERE NOT OBLIGED TO ENTER INTO WRITTEN CONTRACTS WITH THE EXCLUSIVE BARGAINING REPRESENTATIVE OF THEIR EMPLOYEES, INTERFERED WITH, RESTRAINED, AND COERCED ITS EMPLOYEES IN THE EXERCISE OF THE RIGHTS GUARANTEED IN SECTION 7 OF THE ACT. THIS MEETING HAD BEEN EXPRESSLY SCHEDULED FOR A DISCUSSION OF WORKING CONDITIONS BETWEEN REPRESENTATIVES OF THE UNION, WHOSE CLAIM TO REPRESENT THE EMPLOYEES HAD NOT BEEN CONTESTED, AND THE RESPONDENT. THE RESPONDENT CONVERTED THE MEETING INTO A FORUM FOR ANTI-UNION STATEMENTS AND MISREPRESENTATIONS OF THE EMPLOYEES' RIGHTS WHICH WOULD BE CARRIED BACK TO THE EMPLOYEES GENERALLY BY THE 12 EMPLOYEES CALLED IN BY THE RESPONDENT. WE FIND THAT THE RESPONDENT BY THESE ACTS INTENDED TO LOWER THE PRESTIGE OF THE UNION AND TO DISCOURAGE UNION MEMBERSHIP AND ACTIVITY.

AGAIN, IN THE CASE OF NLRB V. REED & PRINCE MANUFACTURING Co., 23 LABOR CASES, ¶67,663, PP. 83,906-83,907, AND (1951) 96 NLRB 850, PP. 854-855, WE FIND THE FOLLOWING STATEMENT:

3. AT EACH OF THE BARGAINING SESSIONS WITH THE UNION THE RESPONDENT INSISTED, OVER THE UNION'S STRENUOUS OBJECTION, ON HAVING A STENOGRAPHER TAKE DOWN A VERBATIM TRANSCRIPT OF THE PROCEEDINGS. THIS IS NOT THE APPROACH USUALLY TAKEN BY A PARTICIPANT IN COLLECTIVE BARGAINING NEGOTIATIONS SEEKING AND EXPECTING IN GOOD FAITH TO REACH AN AGREEMENT; IT IS MORE CONSISTENT WITH THE BUILDING OF A DEFENSE TO ANTICIPATED REFUSAL TO BARGAIN CHARGES. THE PRESENCE OF A STENOGRAPHER AT SUCH NEGOTIATIONS IS NOT CONDUCTIVE TO THE FRIENDLY ATMOSPHERE SO NECESSARY FOR THE SUCCESSFUL TERMINATION OF THE NEGOTIATIONS, AND IT IS A PRACTICE CONDEMNED BY EXPERIENCED PERSONS IN THE INDUSTRIAL RELATIONS FIELD. INDEED, THE BUSINESS WORLD ITSELF FROWNS UPON THE PRACTICE IN ANY DELICATE NEGOTIATIONS WHERE IT IS SO NECESSARY FOR THE PARTIES TO EXPRESS THEMSELVES FREELY.

THE INSISTENCE BY THE RESPONDENT IN THIS CASE UPON THE PRESENCE OF A STENOYPIST AT THE BARGAINING MEETINGS IS, IN OUT OPINION, FURTHER EVIDENCE OF ITS BAD FAITH.

IN L. G. EVERIST, INC. CASE, (1953) 103 NLRB 308-309, THE NLRB STATED AS FOLLOWS:

(1) ON AUGUST 15, 1951 THE RESPONDENT POSTED AT ITS QUARRY A NOTICE TO ITSEMPLOYEES "INVITING ALL HANDS" TO ATTEND A BARGAINING CONFERENCE WITH THE UNION SCHEDULED FOR THAT AFTERNOON. THE UNION OBJECTED TO HOLDING THE CONFERENCE UNDER SUCH CONDITIONS. THE RESPONDENT, HOWEVER, CONTINUED TO INSIST THAT THE CONFERENCE BE HELD IN THE PRESENCE OF THE INVITED EMPLOYEES. AS A RESULT, NO BARGAINING CONFERENCE WAS HELD ON THAT DAY. THE NEXT DAY, THE UNION CALLED A STRIKE IN PROTEST AGAINST THE RESPONDENT'S CONDUCT OF THE PREVIOUS DAY AND ESTABLISHED A PICKET LINE AT THE PLANT ENTRANCES. RESPONDENT'S INSISTENCE THAT BARGAINING NEGOTIATIONS BE CONDUCTED IN THE PRESENCE OF THE RANK-AND-FILE EMPLOYEES CLEARLY WAS CONTRARY TO UNIFORM INDUSTRIAL PRACTICE AND WAS NOT CONDUCIVE TO THE ORDERLY, INFORMAL, AND FRANK DISCUSSION OF THE ISSUES CONFRONTING THE NEGOTIATORS NECESSARY TO REACH A CONTRACT. IT ALSO CONSTITUTED INTERFERENCE WITH THE EMPLOYEES' RIGHT TO BARGAIN THROUGH THE REPRESENTATIVES OF THEIR OWN CHOOSING, AND EVIDENCED THE RESPONDENT'S ABSENCE OF GOOD FAITH IN DEALING WITH THE STATUTORY BARGAINING AGENT OF THE EMPLOYEES.

9. IT IS TO BE NOTED THAT THE LABOUR RELATIONS ACT DOES NOT DIFFERENTIATE BETWEEN A MUNICIPALITY AND ANY OTHER EMPLOYER AND IT WOULD THEREFORE APPEAR THAT UNDER THE LABOUR RELATIONS ACT A MUNICIPALITY HAS NO RIGHTS WHICH OTHER EMPLOYERS WOULD NOT HAVE.

10. THE QUESTION ARISES WHEN CONSIDERING THE APPLICANT'S POSITION IN THIS CASE AS TO THE RIGHT OF THE UNION TO INSIST THAT BARGAINING BE CONDUCTED AT A UNION MEETING AT WHICH ALL OF ITS MEMBERS WOULD BE IN ATTENDANCE. IT APPEARS TO US THAT EMPLOYERS GENERALLY WOULD STRENUOUSLY OBJECT TO BARGAINING UNDER SUCH CIRCUMSTANCES. THE REAL QUESTION, HOWEVER, TO BE DECIDED BY THE BOARD IS WHETHER THE RESPONDENT'S INSISTENCE UPON PRIVATE BARGAINING AS OPPOSED TO PUBLIC BARGAINING WITH MEMBERS OF THE PRESS PRESENT IS, OF ITSELF, EVIDENCE OF REFUSAL TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT. THE UNIFORM PRACTICE IN BARGAINING FOR COLLECTIVE AGREEMENTS IN THAT BARGAINING TAKES PLACE PRIVATELY AND VERY OFTEN IN THE STRICTEST SECRECY. AS THE EVIDENCE DISCLOSED, IT WOULD SEVERELY PREJUDICE THE EFFICACY OF THE RESPONDENT AS BARGAINING AGENT IF EVERY CONCESSION MADE BY THE UNION WERE DISCLOSED TO THE MEMBERS BEFORE THE COMPLETE PACKAGE HAS BEEN AGREED UPON BY THE PARTIES.

IN ADDITION, WE ARE OF OPINION THAT IF A UNION WERE FORCED TO BARGAIN PUBLICLY BEFORE A MEETING OF THE BOARD OF CONTROL THE UNION NEGOTIATORS WOULD BE PLACED IN THE POSITION OF APPROACHING THE BOARD OF CONTROL AS PETITIONERS RATHER THAN AS EQUAL PARTIES AT THE BARGAINING TABLE. WE ARE THEREFORE OF OPINION THAT THE APPLICANT'S INSISTENCE ON PUBLIC BARGAINING IS NOT ONLY CONTRARY TO THE PAST PRACTICE OF THE APPLICANT AND THE RESPONDENT BUT CONTRARY TO THE GENERAL PRACTICE OF BARGAINING BETWEEN EMPLOYERS AND UNIONS IN ONTARIO. IN OUR OPINION, PUBLIC BARGAINING WOULD NOT BE CONDUCTIVE TO ORDERLY, INFORMAL, AND FRANK DISCUSSIONS OF THE ISSUES CONCERNING THE NEGOTIATORS WHICH ARE ESSENTIAL TO GOOD COLLECTIVE BARGAINING.

11. WHEN THE RESOLUTION OF FEBRUARY 12TH WAS PASSED BY THE APPLICANT, AS STATED ON THE FACE OF THE RESOLUTION, THE APPLICANT WAS AWARE THAT THERE WAS "PREVIOUS POLICY TO THE CONTRARY". THE MERE FACT THAT THE APPLICANT ATTEMPTED TO ADOPT THIS EXTRAORDINARY PROCEDURE IN THE FACE OF PRECEDENT TO THE CONTRARY WOULD LEAD TO THE CONCLUSION THAT THE APPLICANT'S ACTION WAS CALCULATED TO PREJUDICE THE UNION, IN ITS NEGOTIATIONS WITH THE APPLICANT AND WITH THE EMPLOYEES, SO AS TO IMPAIR THE UNION'S ABILITY TO EFFECTIVELY ACT AS THE BARGAINING AGENT OF THE EMPLOYEES IT REPRESENTS.

12. WE THEREFORE FIND THAT THE UNION WAS NOT IN BREACH OF SECTION 12 OR ANY OTHER SECTION OF THE LABOUR RELATIONS ACT WHEN IT REFUSED TO MEET AND BARGAIN WITH THE APPLICANT IN PUBLIC. IT APPEARS TO US THAT THE LABOUR RELATIONS ACT IS DESIGNED AND IS INTENDED TO PROMOTE FREE COLLECTIVE BARGAINING AND SHOULD NOT BE IMPAIRED BY PRESSURES ON ONE SIDE OR THE OTHER WHICH HAVE NOTHING TO DO WITH THE ISSUES INVOLVED IN COLLECTIVE BARGAINING. IT IS COMMONLY ACCEPTED, AND IS THE UNIVERSAL PRACTICE IN ONTARIO, THAT THE ART OF COLLECTIVE BARGAINING CAN ONLY BE EFFECTIVELY PRACTISED IN THE INFORMAL ATMOSPHERE OF A PRIVATE MEETING. THE SUGGESTION THAT THE BARGAINING MEETING BE HELD IN PUBLIC IS NOT ONLY FOREIGN TO THE ACCEPTED PRACTICE BUT, IN OUR OPINION, WOULD BE DESTRUCTIVE TO COLLECTIVE BARGAINING AS WE PRESENTLY UNDERSTAND IT AND AS CONTEMPLATED BY THE LABOUR RELATIONS ACT. TO INSIST ON PUBLIC BARGAINING AS THE APPLICANT HAS DONE WOULD BE TO ATTEMPT TO ALTER, IF NOT DESTROY, THE COMMONLY ACCEPTED PRACTICES AND PROCEDURES AT THE BARGAINING TABLE. SINCE THE LEGISLATION WITH WHICH WE ARE HERE CONCERNED WAS ENACTED IN LIGHT OF THE PRACTICE THAT EXISTED, WE ARE OF OPINION THAT A PARTY CAN INSIST ON THE CONTINUATION OF THE ACCEPTED PRACTICES WITHOUT CONTRAVENING THE ACT. THE UNION THEREFORE HAD EVERY RIGHT TO RESIST THE APPLICANT'S DEMANDS THAT BARGAINING BE CARRIED ON IN PUBLIC. ON THE OTHER HAND, THE APPLICANT HAD NO RIGHT TO UNILATERALLY TAKE A POSITION WHICH WOULD DEPRIVE THE RESPONDENT OF THE ACCEPTED PRACTICE OF PRIVATE BARGAINING. IN THE EXERCISE OF OUR DISCRETION, WE FIND THAT THE APPLICANT IS NOT ENTITLED TO THE CONSENT REQUESTED.

13. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN: APRIL 23, 1968.

1. I DISSENT.

2. THE FACTS IN THIS CASE ARE NOT IN DISPUTE AND ARE SET OUT IN PARAGRAPHS 1 TO 7, INCLUSIVE, OF THE MAJORITY DECISION.

3. THREE APPLICATIONS FOR CONSENT TO PROSECUTE WERE FILED WITH THE BOARD IN THIS MATTER AS FOLLOWS:-

FILE No. 14260-67-U

APPLICANT - NORTH YORK TOWNSHIP CIVIC
EMPLOYEES UNION No. 94

RESPONDENT - THE CORPORATION OF THE BOROUGH
OF NORTH YORK

*FILE No. 14290-67-U

APPLICANT - THE CORPORATION OF THE BOROUGH
OF NORTH YORK

RESPONDENT - THE NORTH YORK TOWNSHIP CIVIC
EMPLOYEES' UNION, LOCAL 94

*(THE INSTANT CASE)

FILE No. 14291-67-U

APPLICANT - THE CORPORATION OF THE BOROUGH
OF NORTH YORK

RESPONDENT - LOCAL UNION 373 OF THE CANADIAN
UNION OF PUBLIC EMPLOYEES (NORTH
YORK BOROUGH OF MUNICIPAL EMPLOYEES)

4. ALL THREE APPLICATIONS WERE HEARD SIMULTANEOUSLY BY THE BOARD WITH THE EVIDENCE ADDUCED APPLYING TO ALL THREE CASES.

5. THERE MUST BE NO MISUNDERSTANDING AS TO THE REAL ISSUE IN THIS CASE. IT IS NOT A MATTER AS TO WHETHER PUBLIC NEGOTIATIONS ARE DESIRABLE OR IF THEY WILL CONTRIBUTE TO OR HINDER THE MAKING OF A COLLECTIVE AGREEMENT BETWEEN THE PARTIES. THE BASIC ISSUE IS WHETHER THE RESPONDENT VIOLATES THE PROVISIONS OF SECTION 12 OF THE ACT BY REFUSING TO BARGAIN BECAUSE THE APPLICANT INSISTS ON ITS AUTHORIZED REPRESENTATIVES, COMPOSED SOLELY OF MEMBERS OF THE BOARD OF CONTROL, TO CONDUCT ITS COLLECTIVE BARGAINING NEGOTIATIONS WITH THE RESPONDENT TRADE UNION IN PUBLIC AND IN THE SAME MANNER AS IT WOULD AT A REGULAR MEETING OF THE BOARD OF CONTROL. SECTION 12 OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

12. THE PARTIES SHALL MEET WITHIN FIFTEEN DAYS FROM THE GIVING OF THE NOTICE OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES AGREE UPON AND THEY SHALL BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT.

(EMPHASIS ADDED)

6. COUNSEL FOR THE APPLICANT IN THE INSTANT CASE STRESSES THE FACT THAT BEING A MUNICIPALITY THE APPLICANT IS ALSO GOVERNED BY THE MUNICIPAL ACT. HE DIRECTED THE BOARD'S ATTENTION TO SECTION 190 OF THAT ACT WHICH READS AS FOLLOWS:

190.(1) THE MEETINGS, EXCEPT MEETINGS OF A COMMITTEE INCLUDING A COMMITTEE OF THE WHOLE, OF EVERY COUNCIL AND OF EVERY LOCAL BOARD AS DEFINED BY THE DEPARTMENT OF MUNICIPAL AFFAIRS ACT EXCEPT BOARDS OF COMMISSIONERS OF POLICE AND SCHOOL BOARDS, SHALL BE OPEN TO THE PUBLIC AND NO PERSONS SHALL BE EXCLUDED THEREFROM EXCEPT FOR IMPROPER CONDUCT. 1960-61, c.59, s.4

(EMPHASIS ADDED)

(2) THE HEAD OR OTHER PRESIDING OFFICER MAY EXPEL OR EXCLUDE FROM ANY MEETING ANY PERSON WHO HAS BEEN GUILTY OF IMPROPER CONDUCT AT THE MEETING. R.S.O. 1960, c.249, s.190(2)

7. IN THE CANADIAN PACIFIC RAILWAY COMPANY (ROYAL YORK HOTEL) CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER, 1961, P. 214, THE BOARD STATED:

IN GRANTING LEAVE TO INSTITUTE A PROSECUTION, THE BOARD SELDOM GIVES REASONS FOR ITS DECISION. THE REASON FOR THIS PRACTICE IS THE DANGER THAT SUCH REASONS WILL BE INTERPRETED AS AN EXPRESSION OF OPINION BY THE BOARD ON THE MERITS OF THE PROSECUTION ITSELF.

IN THE PRESENT CASE THE FACTS ARE CLEAR. THE ISSUES RAISED BY COUNSEL IN THEIR ARGUMENTS, HOWEVER, INVOLVE QUESTIONS OF LAW, THE ANSWERS TO WHICH, IN OUR OPINION, ARE FAR FROM CLEAR.

8. THE INTERRELATIONSHIP BETWEEN THE THREE APPLICATIONS FILED, AS SET OUT IN PARAGRAPH 2 ABOVE, PREVENTS ME FROM DISCUSSING THE EVIDENCE AND GIVING REASONS BASED ON SUCH EVIDENCE AS TO WHY I WOULD GRANT CONSENT TO PROSECUTE IN THIS CASE. TO DO SO, I WOULD BE EXPRESSING AN OPINION ON THE MERITS OF THE PROSECUTION ITSELF WHICH

WOULD BE CONTRARY TO THE BOARD'S LONG STANDING POLICY AS RESTATED IN THE CANADIAN PACIFIC RAILWAY (ROYAL YORK HOTEL) CASE (SUPRA). I WOULD BE DOING INDIRECTLY WHAT I MUST REFRAIN FROM DOING DIRECTLY.

9. ALL THREE APPLICATIONS ARE NEITHER FRIVOLOUS NOR VEXATIOUS. THE PROVISIONS OF THE APPLICABLE LEGISLATION REQUIRE INTERPRETATION AND CLARIFICATION FOR THE FUTURE GUIDANCE OF THE PARTIES. SECTION 12 OF THE LABOUR RELATIONS ACT IS SILENT AS TO WHETHER NEGOTIATION MEETINGS ARE TO BE HELD IN PRIVATE OR PUBLIC. THE PROVISIONS OF THE MUNICIPAL ACT PLACE CERTAIN LIMITATIONS ON THE APPLICANT TO HOLD MEETINGS IN PRIVATE. COLLECTIVE BARGAINING HAS NOW BECOME AN IMPORTANT FUNCTION IN THE ADMINISTRATION OF MUNICIPAL GOVERNMENT AS WELL AS A VITAL FACTOR IN ITS FINANCIAL PLANNING AND ESTABLISHING THE TAX RATE TO BE LEVIED ON THE PROPERTY OWNERS IN THE MUNICIPALITY. IT IS PUBLIC BUSINESS IN EVERY SENSE OF THE TERM.

10. FOR THESE REASONS, THE APPLICANT SHOULD NOT BE DENIED ITS REQUESTED ACCESS TO THE COURTS. I WOULD EITHER GRANT CONSENT TO INSTITUTE A PROSECUTION IN THIS AS WELL AS IN THE OTHER TWO APPLICATIONS REFERRED TO ABOVE OR DISMISS ALL THREE APPLICATIONS.

14291-67-U: THE CORPORATION OF THE BOROUGH OF NORTH YORK (APPLICANT) V. LOCAL UNION 373 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES (NORTH YORK BOROUGH MUNICIPAL EMPLOYEES) (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: W. STEWART ROGERS, Q.C., AND T. MURPHY
FOR THE APPLICANT, MARTIN LEVINSON, A. MCCULLOCH AND F. KITCHEN
FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
O. HODGES: APRIL 23, 1968.

THE FACTS OF THIS CASE ARE ALMOST IDENTICAL TO THE FACTS IN THE APPLICATION FOR CONSENT TO PROSECUTE BETWEEN THE APPLICANT AND THE NORTH YORK TOWNSHIP CIVIC EMPLOYEES' UNION; LOCAL 94, BOARD FILE 14290-67-U. FOR THE REASONS CONTAINED IN THE BOARD'S DECISION DATED APRIL 23, 1968 IN THAT CASE, THIS APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN: APRIL 23, 1968.

I DISSENT FOR THE REASONS GIVEN BY ME IN THE APPLICATION FOR CONSENT TO PROSECUTE BETWEEN THE APPLICANT AND THE NORTH YORK TOWNSHIP CIVIC EMPLOYEES' UNION, LOCAL 94, BOARD FILE No. 14290-67-U.

14337-67-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 506
(APPLICANT) v. ONTARIO PLASTERING CONTRACTORS AND SERGIO BARTOZZI
(RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS O. HODGES
AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: R. KOSKIE AND A. NEIL FOR THE APPLICANT
AND ROBERT B. STATTON AND S. BARTOZZI FOR THE RESPONDENTS.

DECISION OF THE BOARD: APRIL 11, 1968.

1. THE APPLICANT HAS APPLIED TO THE BOARD FOR CONSENT TO
INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR AN OFFENCE UNDER
THE ACT. THE APPLICANT ALLEGES:

THE RESPONDENT COMPANY AND THE RESPONDENT
BARTOZZI ACTING ON BEHALF OF THE RESPONDENT
COMPANY:

- (A) INTERFERED WITH THE SELECTION OF A TRADE
UNION OR THE REPRESENTATION OF EMPLOYEES OF THE
RESPONDENT COMPANY BY A TRADE UNION CONTRARY
TO SECTION 48 OF THE LABOUR RELATIONS ACT;
- (B) SOUGHT TO COMPEL EMPLOYEES OF THE RESPONDENT
COMPANY TO BECOME MEMBERS OF A TRADE UNION
CONTRARY TO SECTION 50 (C) OF THE LABOUR RELATIONS
ACT.

2. THE PARTICULARS SUPPLIED BY THE APPLICANT IN ITS APPLICATION
ARE AS FOLLOWS:

(I) ON OR ABOUT FEBRUARY 23, 1968, DURING
REGULAR WORKING HOURS, THE RESPONDENT BARTOZZI
WHO IS A PARTNER OF THE RESPONDENT COMPANY AND
WHO WAS ACTING ON ITS BEHALF, TOGETHER WITH ONE
SANTINO, A BUSINESS REPRESENTATIVE OF LOCAL 117
OF THE PLASTERERS' INTERNATIONAL UNION ATTENDED
AT THE RESPONDENT COMPANY'S PROJECT LOCATED AT
FOREST MANOR ROAD, WILLOWDALE, ONTARIO. AT THIS
TIME THE RESPONDENT BARTOZZI INSTRUCTED HIS
LABOURER EMPLOYEES TO INFORM HIM WHETHER THEY
HAD JOINED A TRADE UNION, AND IF SO, WHICH
TRADE UNION THEY HAD JOINED.

(II) ON OR ABOUT MARCH 5TH, 1968, THE RESPONDENT
BARTOZZI AND THE SAID SANTINO ONCE AGAIN, DURING
REGULAR WORKING HOURS, ATTENDED AT THE SAID
PROJECT. AT THIS TIME, THE RESPONDENT BARTOZZI
COMPELLED THE SAID LABOURER EMPLOYEES BY
THREATS, INTIMIDATION AND OTHER MEANS TO BECOME
MEMBERS OF LOCAL 117 OF THE PLASTERERS'
INTERNATIONAL UNION.

A READING OF THE ABOVE MAKES IT CLEAR THAT THE APPLICANT'S WHOLE CASE TURNS ON THE ACTIONS OF THE RESPONDENT SERGIO BARTOZZI.

3. AT THE CONCLUSION OF THE TESTIMONY OF THE FIRST WITNESS CALLED BY THE APPLICANT, AND AS A RESULT OF THAT TESTIMONY, THE APPLICANT SOUGHT LEAVE TO AMEND THE NAME OF THE RESPONDENT SERGIO BARTOZZI ON THE GROUND THAT IT HAD MADE A MISTAKE IN NAMING SERGIO BARTOZZI INSTEAD OF HIS BROTHER, ALFREDO BARTOZZI, WHO APPARENTLY IS ALSO A PARTNER OF THE RESPONDENT FIRM, ONTARIO PLASTERING CONTRACTORS. THE APPLICANT ALSO SOUGHT LEAVE TO AMEND ITS PARTICULARS IN THE SAME FASHION. THE RESPONDENTS OBJECTED TO THE AMENDMENT AND, IN ADDITION, MOVED FOR A DISMISSAL ON THE GROUND THAT THEY WERE BEING CALLED ON TO DEAL WITH A COMPLETELY DIFFERENT CASE WHICH THEY WERE NOT PREPARED TO MEET. THE APPLICANT ARGUED THAT AT THE MOST THE BOARD SHOULD GRANT AN ADJOURNMENT AT THIS TIME AND PERMIT THE NECESSARY AMENDMENTS, AT LEAST TO THE MATERIAL FACTS IF NOT TO THE NAMED RESPONDENT SERGIO BARTOZZI. AFTER HEARING THE REPRESENTATIONS OF THE PARTIES, THE BOARD ADJOURNED THE CASE AND RESERVED ITS DECISION.

4. IN A RECENT DECISION OF THE BOARD IN WELPORT INVESTMENTS LIMITED, DATED APRIL 10, 1968, BOARD FILE NO. 14219-67-U, A SOMEWHAT SIMILAR PROBLEM AROSE ON AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION. THERE THE APPLICANT CONCEDED THAT IT COULD NOT ADDUCE EVIDENCE WITH RESPECT TO THE MATERIAL FACTS RELIED UPON BECAUSE SECTION 83 OF THE ACT PROHIBITED THE INTRODUCTION OF EVIDENCE IN SUPPORT OF SUCH MATERIAL FACTS. THE APPLICANT SOUGHT LEAVE TO AMEND ITS PARTICULARS AND THIS WAS OBJECTED TO BY THE RESPONDENT SINCE TO DO SO WOULD NECESSITATE THE PREPARATION OF A NEW DEFENCE INVOLVING FACTORS WITH WHICH HE WAS UNFAMILIAR. THE BOARD'S DECISION READS IN PART AS FOLLOWS:

IN OUR VIEW, THE CONSEQUENCES OF THE FAILURE OF THE APPLICANT TO TAKE COGNIZANCE OF THE PROVISIONS OF SECTION 83 OF THE ACT IN THE PREPARATION OF HIS PARTICULARS CANNOT BE PERMITTED TO OPERATE TO THE PREJUDICE OF THE RESPONDENT, PARTICULARLY BECAUSE OF THE CRIMINAL OR QUASI-CRIMINAL ASPECTS OF THE PROCEEDINGS WHERE PRECISION IS ESPECIALLY TO BE DESIRED. IT MIGHT ALSO BE NOTED THAT BECAUSE OF THE CRIMINAL ASPECTS INVOLVED THE RESPONDENT IS NOT BOUND TO REVEAL HIS DEFENCE IN ADVANCE, SO THAT NOTHING MAY PROPERLY BE SAID TO TURN UPON THE FACT THAT THE APPLICANT WAS UNAWARE OF THE DEFENCE.

HAVING IN MIND THE NATURE OF THESE PROCEEDINGS, THE BOARD DISMISSES THE APPLICATION.

5. IN OUR VIEW, THE SITUATION IN THE PRESENT CASE IS STRONGER THAN THAT DESCRIBED IN THE WELPORT INVESTMENTS LIMITED CASE. ALTHOUGH THE APPLICANT ALLEGES A BONA FIDE MISTAKE, THE WITNESS WHO TESTIFIED WAS VERY CLEAR IN HIS EVIDENCE AND WE CAN ONLY CONCLUDE THAT THE MISTAKE RESULTED FROM THE APPLICANT'S FAILURE TO TAKE SUFFICIENT CARE IN THE PREPARATION OF ITS CASE. IN THE RESULT, THEREFORE, AND HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD DISMISSES THE APPLICATION.

14338-67-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. MAREL CONTRACTORS AND MARCO MUZZO (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: RAYMOND KOSKIE, A. NEIL FOR THE APPLICANT, ROBERT B. STATTON, MARCO MUZZO FOR THE RESPONDENT.

DECISION OF THE BOARD: APRIL 11, 1968.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR INTERFERING WITH THE SELECTION OF A TRADE UNION CONTRARY TO THE PROVISIONS OF SECTION 48 OF THE LABOUR RELATIONS ACT AND THAT THE RESPONDENTS SOUGHT TO COMPEL EMPLOYEES OF MAREL CONTRACTORS FROM BECOMING OR CONTINUING OR CEASING TO BE MEMBERS OF A TRADE UNION CONTRARY TO THE PROVISIONS OF SECTION 50(c) OF THE LABOUR RELATIONS ACT AND THAT THE RESPONDENTS SOUGHT TO COMPEL EMPLOYEES OF MAREL CONTRACTORS TO BECOME MEMBERS OF A TRADE UNION CONTRARY TO THE PROVISIONS OF SECTION 50(c) OF THE LABOUR RELATIONS ACT.

2. HAVING CONSIDERED ALL OF THE EVIDENCE PRESENTED TO THE BOARD IN THIS MATTER AS WELL AS THE REPRESENTATIONS OF THE PARTIES HERETO THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(A) THAT THE RESPONDENTS INTERFERED WITH THE SELECTION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES OF MAREL CONTRACTORS BY A TRADE UNION CONTRARY TO SECTION 48 OF THE ACT;

(B) THAT THE RESPONDENTS SOUGHT TO COMPEL EMPLOYEES OF MAREL CONTRACTORS TO REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE MEMBERS OF A TRADE UNION CONTRARY TO SECTION 50(c) OF THE ACT;

(C) THAT THE RESPONDENTS SOUGHT TO COMPEL EMPLOYEES OF MAREL CONTRACTORS TO BECOME MEMBERS OF A TRADE UNION CONTRARY TO SECTION 50(c) OF THE ACT;

3. THE APPROPRIATE DOCUMENTS WILL ISSUE.

INDEXED ENDORSEMENT - SECTION 63

14406-68-M: JAMES MUNRO (COMPLAINANT) V. LOCAL 736, INTERNATIONAL
IRONWORKERS ASSOC. OF BRIDGE & STRUCTURAL & ORNAMENTAL (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE
AND E. BOYER.

DECISION OF THE BOARD: APRIL 25, 1968.

1. THIS IS A COMPLAINT CONCERNING FINANCIAL STATEMENT FILED BY THE COMPLAINANT UNDER THE PROVISIONS OF SECTION 63 OF THE LABOUR RELATIONS ACT.
2. PURSUANT TO A DIRECTION BY THE BOARD, THE RESPONDENT FILED WITH THE BOARD AN AUDITED FINANCIAL STATEMENT FOR THE YEAR ENDING DECEMBER 31, 1967, VERIFIED BY AN AFFIDAVIT OF ITS TREASURER AND FINANCIAL SECRETARY. A COPY OF THIS FINANCIAL STATEMENT WAS FORWARDED TO THE COMPLAINANT, WHO WAS ADVISED THAT THE PROCEEDINGS WOULD BE TERMINATED UNLESS HE HAD FURTHER REPRESENTATIONS TO MAKE TO THE BOARD.
3. THE COMPLAINANT HAS NOW WRITTEN THE BOARD AND IT WOULD APPEAR THAT HE IS ASKING THE BOARD TO OBTAIN FURTHER INFORMATION. IT IS CLEAR FROM A READING OF SECTION 63 THAT THE ONLY JURISDICTION WHICH THE BOARD HAS UNDER THAT SECTION IS TO OBTAIN AN AUDITED FINANCIAL STATEMENT AND TO FURNISH COPIES THEREOF TO SUCH MEMBERS OF THE TRADE UNION AS THE BOARD DIRECTS. THIS IN FACT HAS BEEN DONE IN THE PRESENT CASE AND THE BOARD IS THEREFORE WITHOUT JURISDICTION TO DEAL WITH ANY OF THE OTHER MATTERS REFERRED TO IN THE COMPLAINT AND IN THE SUBSEQUENT LETTER FROM THE COMPLAINANT DATED APRIL 23, 1968.
4. ACCOMPANYING THE LAST MENTIONED LETTER WERE CERTAIN DOCUMENTS DEALING WITH A CHARGE WHICH HAS BEEN MADE AGAINST THE COMPLAINANT UNDER THE PROVISIONS OF THE RESPONDENT'S CONSTITUTION AND RESULTING FROM THE COMPLAINANT'S ACTION IN FILING THIS COMPLAINT. IT IS NOT CLEAR WHY THE COMPLAINANT FILED THESE DOCUMENTS WITH THE BOARD IN THESE PROCEEDINGS SINCE, AS INDICATED ABOVE, THE ONLY JURISDICTION THE BOARD HAS UNDER SECTION 63 IS TO REQUIRE THE FILING OF AN AUDITED FINANCIAL STATEMENT. IF IT IS THE COMPLAINANT'S INTENTION TO MAKE SOME FURTHER COMPLAINT TO THE BOARD, THEN IT MUST BE DONE ON THE PROPER FORMS.
5. IN THE RESULT, THESE PROCEEDINGS ARE HEREBY TERMINATED.

INDEXED ENDORSEMENTS - SECTION 65

14038-67-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A.
& CANADA (COMPLAINANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED
(RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: APRIL 9, 1968.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. FOLLOWING ITS USUSAL PRACTICE, THE BOARD APPOINTED A FIELD OFFICER WHO SUBSEQUENTLY REPORTED THE RESULTS OF HIS INQUIRY AND ENDEAVOURS TO THE BOARD. CONSIDERATION OF THE REPORT WAS DELAYED PENDING DISPOSITION OF ANOTHER APPLICATION BEFORE A DIFFERENTLY CONSTITUTED DIVISION OF THE BOARD. WHEN A FINAL DECISION WAS HANDED DOWN IN THAT PROCEEDING, THE BOARD CONSIDERED THE REPORT OF THE FIELD OFFICER AND INSTRUCTED ITS DEPUTY REGISTRAR TO WRITE THE COMPLAINANT AS FOLLOWS:

FURTHER TO MY LETTER OF MARCH 20TH LAST, THE BOARD HAS NOW DIRECTED ME TO INFORM YOU THAT ON CONSIDERING YOUR COMPLAINT IT HAS DISCOVERED THAT THE ONLY RELIEF YOU APPEAR TO BE SEEKING IS "THE UNION REQUESTS ON THE BASIS OF ALL CHARGES IT BE CERTIFIED."

THE DIVISION OF THE BOARD WHICH WAS DEALING WITH THE CERTIFICATION APPLICATION HAS NOW DISMISSED THAT APPLICATION. IN VIEW OF THE ABOVE, WOULD YOU PLEASE INFORM THE BOARD IN WRITING THE RELIEF WHICH YOU ARE SEEKING IN THE COMPLAINT FILED UNDER SECTION 65. IT IS POINTED OUT, FOR YOUR INFORMATION, THAT THE BOARD HAS NO POWER TO CERTIFY A TRADE UNION ON A COMPLAINT FILED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

2. A FURTHER LETTER, DATED MARCH 28, 1968, WAS SENT TO THE COMPLAINANT AS FOLLOWS:

AS I HAVE NOT HEARD FROM YOU IN REPLY TO MY LETTER OF MARCH 22ND LAST WITH RESPECT TO THE RELIEF WHICH YOU ARE SEEKING IN THE COMPLAINT FILED UNDER SECTION 65 OF THE ACT, THIS IS TO ADVISE THAT THE BOARD DOES NOT INTEND TO PROCEED FURTHER WITH THIS MATTER UNTIL SUCH TIME AS IT RECEIVES SOME COMMUNICATION FROM YOU.

3. THE COMPLAINANT'S REPRESENTATIVE SPOKE TO THE DEPUTY REGISTRAR BY TELEPHONE ON MARCH 29TH AND, AS A RESULT, A FURTHER LETTER WAS SENT TO THE COMPLAINANT AS FOLLOWS:

THIS MATTER HAS NOW BEEN FURTHER CONSIDERED BY THE BOARD IN LIGHT OF THE BOARD'S LETTERS TO YOU DATED MARCH 22ND AND 28TH LAST AND YOUR TELEPHONE CONVERSATION TO ME OF MARCH 29TH, AND

I HAVE BEEN DIRECTED TO INFORM YOU THAT THE BOARD REPEATS ITS REQUEST THAT YOU ADVISE IT FORTHWITH, IN WRITING, AS TO THE RELIEF WHICH YOU ARE SEEKING IN THE ABOVE COMPLAINT.

I HAVE BEEN DIRECTED TO ADVISE YOU FURTHER THAT IF THE BOARD HAS NOT HEARD FROM YOU IN WRITING BY FRIDAY, APRIL 5TH, 1968, IT WILL PROCEED TO DISPOSE OF THE CASE ON THE BASIS OF THE MATERIALS THEN BEFORE IT.

AS OF APRIL 9TH, 1968 THE COMPLAINANT HAS NOT REPLIED TO THE BOARD'S REQUESTS.

4. IN THESE CIRCUMSTANCES, IT IS QUITE IMPOSSIBLE FOR THE BOARD TO DETERMINE WHETHER THE COMPLAINT SHOULD BE LISTED FOR HEARING BECAUSE THE BOARD CANNOT ASCERTAIN WHETHER THE COMPLAINT MAKES OUT ANY KIND OF A CASE, LET ALONE A PRIMA FACIE CASE, FOR THE REMEDY REQUESTED. THEREFORE, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS HEREBY DISMISSED.

14176-67-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION - LOCAL 261 (COMPLAINANT) v. THE TALISMAN MOTOR INN (RESPONDENT).

- AND -

14189-67-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION - LOCAL 261 (COMPLAINANT) v. THE TALISMAN MOTOR INN (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: DENIS J. POWER, JIM GRAHAM, FRANK GRELLA, AND MARCEL SERRE FOR THE COMPLAINANT, AND DONALD R. SNIPPER, Q.C., FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN; AND PARTIAL DECISION OF BOARD MEMBER P. J. O'KEEFFE: APRIL 30, 1968.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT THAT FRANK JOSEPH GRELLA AND MARCEL SERRE HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 3, 48, 50, AND 52 OF THE LABOUR RELATIONS ACT.

2. WE PROPOSE TO DEAL FIRST WITH THE CASE OF FRANK GRELLA. IT WAS ESTABLISHED THAT MR. GRELLA IS AND HAS BEEN FOR SOME THREE YEARS PRESIDENT OF THE COMPLAINANT LOCAL. THE RESPONDENT HAD BEEN AWARE OF THIS FACT FOR THE WHOLE OF THAT TIME.

3. IN ITS REPLY THE RESPONDENT SET OUT THREE GROUNDS UPON WHICH IT ALLEGED IT HAD BASED ITS DISCHARGE OF MR. GRELLA, WHO WAS DISMISSED FROM THE RESPONDENT'S EMPLOYMENT ON THE 14TH OF FEBRUARY, 1968.

4. A SUMMARY OF THE REASONS, IN THE ORDER IN WHICH THEY ARE SET OUT IN THE REPLY, FOLLOWS:

IN (1) IT IS ALLEGED THAT GRELLA WAS BECOMING INCREASINGLY UNACCOMMODATING TO CUSTOMERS;

IN (2) IT IS ALLEGED THAT GRELLA WAS FOUND TO HAVE BEEN CONDUCTING UNION ORGANIZATION ACTIVITIES ON THE PREMISES OF THE RESPONDENT DURING GRELLA'S WORKING HOURS. REFERENCE IS MADE TO A PREVIOUS WARNING ISSUED TO GRELLA ON FEBRUARY 24TH, 1964, WHICH READS AS FOLLOWS:

"THE MANAGEMENT OF THIS HOTEL HAS GIVEN FURTHER CONSIDERATION TO THE INCIDENT WHICH OCCURRED FRIDAY, FEBRUARY 21ST, 1964, AND WHICH LEAD TO YOUR SUSPENSION, WHILE IT IS OUR VIEW THAT YOUR ACTION IN THREATENING OTHER EMPLOYEES AND ENGAGING IN LOUD AND BOISTEROUS LANGUAGE IN THE BEACHCOMBER LOUNGE, WOULD BE SUFFICIENT TO JUSTIFY YOUR DISCHARGE, WE HAVE DECIDED TO GIVE YOU ONE MORE CHANCE AND ACCORDINGLY, YOU MAY REPORT BACK FOR WORK TOMORROW, FEBRUARY 25TH, 1964, AT 11 A.M.

IN VIEW OF THE DISSENSION CAUSED BY YOUR ABUSE OF THE OTHER EMPLOYEES IN THE ROOM IN WHICH YOU WERE EMPLOYED, IT WILL BE NECESSARY TO PLACE YOU IN THE DINING ROOM BAR INSTEAD OF THE BEACHCOMBER LOUNGE, BUT YOU WILL RECEIVE THE SAME SALARY.

WHILE THE MANAGEMENT IS TAKING A LENIENT VIEW OF YOUR ACTION ON THIS OCCASION, WE MUST NOW WARN YOU THAT IF THERE IS ANY REPETITION OF THIS CONDUCT OR ANY FURTHER THREATS TO EMPLOYEES, OR IF YOU ENGAGE IN ANY FURTHER UNION ACTIVITY DURING WORKING HOURS, THIS WILL RESULT IN IMMEDIATE DISCHARGE.

WE TRUST THAT THIS ACTION WILL NOT BE NECESSARY."

IN (3) A FURTHER REASON FOR DISCHARGE IS SAID TO BE THE FACT THAT THE RESPONDENT WAS IN THE PROCESS OF REPLACING MALE WITH FEMALE BARTENDERS, AND THAT THIS WOULD NECESSITATE THE RELEASE OF GRELLA.

5. WHILE THERE WAS EVIDENCE GIVEN WITH RESPECT TO THE FIRST AND THIRD REASONS FOR DISCHARGE ADVANCED BY THE RESPONDENT, THERE IS LITTLE DOUBT THAT THE IMMEDIATE CAUSE OF GRELLA'S DISCHARGE WAS FOR THE SECOND REASON SET OUT BY THE RESPONDENT; THAT IS, FOR HIS UNION ACTIVITY ON THE PREMISES DURING WORKING HOURS. WE SAY THIS BECAUSE THE EVIDENCE WITH RESPECT TO GRELLA'S RELATIONSHIP WITH CUSTOMERS, ALTHOUGH IT MAY HAVE INDICATED A LESS THAN DESIRABLE APPROACH, COVERED AN EXTENSIVE PERIOD OF EMPLOYMENT AND WAS CONSISTENT WITH AN ATTITUDE WHICH THE RESPONDENT HAD APPARENTLY BEEN CONTENT TO TOLERATE FOR SOME TIME.

6. THE EVIDENCE WITH RESPECT TO THE EMPLOYMENT OF A FEMALE BARTENDER INDICATED THAT THE DATE UPON WHICH THE FEMALE WAS TO COMMENCE WORK WAS SOME FIVE DAYS LATER THAN THE DATE UPON WHICH GRELLA WAS DISCHARGED. IT WOULD APPEAR, THEREFORE, THAT HIS DISPLACEMENT AND HIS DISCHARGE WERE AT LEAST ACCELERATED BY THE DISCOVERY OF GRELLA'S ATTEMPTS TO ORGANIZE THE UNION. INCIDENTALLY, A FEMALE BARTENDER HAD, IN FACT, TAKEN GRELLA'S JOB AT THE TIME OF THE HEARING.

7. THE EVIDENCE INDICATES THAT GRELLA HAD ENGAGED IN ORGANIZATIONAL ACTIVITY DURING WORKING HOURS ON THE RESPONDENT'S PREMISES AND THAT ON THE DATE OF HIS DISCHARGE HE HAD, DURING WORKING HOURS, LEFT THE PREMISES TO GET UNION MEMBERSHIP CARDS FROM HIS CAR. HE GAVE THESE TO ONE MURRAY, A FELLOW EMPLOYEE, TOGETHER WITH INSTRUCTIONS WITH RESPECT TO THEIR DISTRIBUTION AND USE. MURRAY'S EVIDENCE WAS THAT GRELLA GAVE HIM TWO BUNDLES OF CARDS AND INSTRUCTED HIM TO GIVE ONE BUNDLE TO "MAID SERVICE" AND TO DISTRIBUTE "ONE TO EACH OF YOUR BOYS" OUT OF THE OTHER BUNDLE. MURRAY GAVE ONE BUNDLE TO "MAID SERVICE" BUT TOOK THE OTHER BUNDLE TO THE CATERING MANAGER, SANSON, TO WHOM HE RELATED THE INCIDENT WITH GRELLA.

8. IN THE COURSE OF THE PROCEEDINGS REFERENCE WAS MADE TO SECTION 53 OF THE LABOUR RELATIONS ACT WHICH READS AS FOLLOWS:

"NOTHING IN THIS ACT AUTHORIZES ANY PERSON TO ATTEMPT AT THE PLACE AT WHICH AN EMPLOYEE WORKS TO PERSUADE HIM DURING HIS WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION. R.S.O. 1960, c. 202, s. 53."

9. THE RESPONDENT, WHILE ADMITTING THAT SECTION 53 DID NOT CREATE AN OFFENCE, CONTENDED THAT THE SECTION "SUGGESTS" THAT A PERSON WHO CARRIED ON THE ACTIVITIES DESCRIBED THEREIN IN THE CIRCUMSTANCES SET OUT IN THE SECTION DOES SO AT HIS OWN RISK. IT CONTENDED THAT IT IS ENTITLED TO A FULL DAY'S WORK FROM MR. GRELLA AND THAT IT SHOULD NOT BE REQUIRED TO PERMIT HIM TO USE THE COMPANY'S TIME AND PREMISES FOR THE PROMOTION OF UNION MEMBERSHIP, PARTICULARLY WHEN IT HAD SPECIFICALLY WARNED HIM IN WRITING THAT IT DID NOT INTEND TO TOLERATE SUCH ACTIVITIES.

10. IN THE BARBARA JARVIS AND ASSOCIATED MEDICAL SERVICES INCORPORATED CASE, 1961 CLLC, ¶16,218, THE BOARD, IN REFERENCE TO SECTION 53 OF THE ACT HAD THIS TO SAY:

"IN SO FAR AS DR. HANNAH'S VIEWS CONCERNING THE PROPRIETY OF UNION ACTIVITY ON COMPANY PREMISES IS CONCERNED, SECTION 53 OF THE ACT (THE RELEVANT PROVISION IN THE ACT AS IT STOOD IN DECEMBER, 1959, WAS SUBSECTION 2 OF SECTION 48) HAS NEVER SINCE THE ADOPTION OF THE PRESENT ACT IN 1950 BEEN COUCHED IN TERMS CREATING AN OFFENCE UNDER THE ACT. THE SECTION DECLARES THAT NOTHING IN THE ACT AUTHORIZES ANY PERSON TO DO CERTAIN THINGS. IN ADDITION, IT APPLIES ONLY TO CERTAIN ACTIVITIES AT THE PLACE AT WHICH AN EMPLOYEE WORKS ... DURING HIS WORKING HOURS. THE SECTION IN NO WAY APPLIES TO ACTIVITIES OUTSIDE OF AN EMPLOYEE'S WORKING HOURS. FINALLY, THE SOLE CLASS OF ACTIVITIES TO WHICH THE SECTION RELATES IS PERSUASION OF A PERSON 'TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE A MEMBER OF A TRADE UNION'. CONSEQUENTLY, THE RESPONDENT CANNOT RELY ON THIS PROVISION TO SANCTION A PROHIBITION AGAINST UNION ACTIVITY OTHER THAN OF THE TYPES OF PERSUASION LISTED IN THE SECTION, OR AT TIMES OTHER THAN DURING WORKING HOURS, OR ON THE PREMISES OF THE EMPLOYER OUTSIDE OF WORKING HOURS. NONE OF THE ACTIVITIES OF MRS. JARVIS FOR WHICH SHE WAS DISCHARGED FALL WITHIN THE TERMS OF THE SECTION."

11. AGAIN, IN THE QUEENSWAY HOSPITAL CASE, FOUND IN THE 1967 SEPTEMBER O.L.R.B. MONTHLY REPORT AT P. 599, PARAGRAPH 20, THE BOARD IN DEALING WITH A COMPLAINT THAT CERTAIN PERSONS HAD BEEN DEALT WITH CONTRARY TO THE PROVISIONS OF THE ACT MAKES REFERENCE TO SECTION 53 AS FOLLOWS:

"20. SIMILARLY, WHETHER OR NOT McCUAIG VIOLATED SECTION 50(c) DEPENDS ON WHOSE EVIDENCE THE BOARD ACCEPTS. IF WE WERE TO ACCEPT McCUAIG'S ACCOUNT OF HIS CONVERSATION WITH GOODSPEED, IN LIGHT OF SECTION 53, WHICH SPECIFICALLY EXEMPTS THE SOLICITING OF UNION SUPPORT AMONG EMPLOYEES DURING WORKING HOURS FROM THE PROTECTION OF THE ACT, McCUAIG'S WARNING TO GOODSPEED, THAT ANY UNION ACTIVITY ON HIS PART ON THE RESPONDENT'S PREMISES DURING WORKING HOURS WOULD RESULT IN DISCIPLINARY ACTION, DOES NOT CONSTITUTE A VIOLATION OF THE

ACT. SHOULD WE, HOWEVER, ACCEPT GOODSPEED'S TESTIMONY THAT McCUAIG THREATENED HIM WITH DISCHARGE IF HE SOLICITED SUPPORT FOR THE COMPLAINANT UNION ON THE RESPONDENT'S PREMISES, WITHOUT ANY QUALIFICATION REGARDING WORKING HOURS, THEN IN OUR OPINION, McCUAIG DID CONTRAVENE SECTION 50(c) OF THE ACT."

12. IT SEEMS CLEAR TO US ON THE EVIDENCE THAT THE ACTIVITIES OF MR. GRELLA FOR WHICH HE WAS DISCHARGED FALL WITHIN THE TERMS OF SECTION 53 WHICH EXEMPTS THE SOLICITING OF UNION SUPPORT AMONG EMPLOYEES ON THE EMPLOYER'S PREMISES DURING WORKING HOURS FROM THE PROTECTION OF THE ACT.

13. IN LIGHT OF THE FOREGOING WE FIND THAT THE COMPLAINANT HAS NOT SATISFIED THE ONUS ON IT TO ESTABLISH THAT FRANK GRELLA HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, AND THE COMPLAINT INSOFAR AS HE IS CONCERNED IS DISMISSED.

14. MARCEL SERRE WAS EMPLOYED AS A BELL-HOP AT THE TIME OF HIS DISCHARGE ON FEBRUARY 20TH, 1967.

15. THE EVIDENCE ESTABLISHED THAT SOME MONTHS PRIOR TO FEBRUARY 20TH THE EMPLOYEES OF THE RESPONDENT HAD ALL BEEN WARNED BY MR. SANSON, CATERING MANAGER, THAT NONE OF THE STAFF WERE TO HAVE THEIR LUNCH IN THE TEMPLE ROOM, A BANQUET ROOM. IT WAS GIVEN IN EVIDENCE THAT SANSON HAD STATED THAT ANYONE FOUND EATING IN THE TEMPLE ROOM WOULD BE DISCHARGED. SERRE ADMITTED THAT HE HAD BEEN TOLD NOT TO EAT IN THE TEMPLE ROOM BUT DENIED THAT THE WARNING OF DISCHARGE HAD BEEN GIVEN. THE REASON FOR THE PROHIBITION WAS THAT THE TEMPLE ROOM WAS SET UP TO BE SHOWN TO PROSPECTIVE CLIENTS WHO WOULD BE UNLIKELY TO BE IMPRESSED IF THE TABLES WERE EITHER IN USE OR CARRIED DIRTY DISHES.

16. ON FEBRUARY 20TH, 1968, THE TEMPLE ROOM HAD BEEN SET UP FOR A MEETING OF THE LIQUOR CONTROL BOARD. THE CATERING MANAGER, DURING THE COURSE OF A LAST MINUTE INSPECTION, FOUND THE ROOM HAD BEEN USED AND THAT DIRTY DISHES HAD BEEN LEFT AT ONE OF THE TABLES.

17. AT THE TIME HE MADE THE DISCOVERY SANSON WAS UNAWARE OF WHO IT WAS WHO HAD USED THE ROOM. HE MADE INQUIRIES AND LEARNED THAT MARCEL SERRE HAD EATEN HIS LUNCH IN THE TEMPLE ROOM AND WAS RESPONSIBLE FOR THE DIRTY DISHES. SANSON REPRIMANDED SERRE FOR HIS CONDUCT IN MAKING USE OF THE TEMPLE ROOM AND LEAVING IT IN THE UNTIDY CONDITION IN WHICH HE HAD FOUND IT. SANSON'S TESTIMONY, WHICH WE ACCEPT, WAS THAT HE WOULD HAVE BEEN SATISFIED TO HAVE LEFT THE MATTER AT THAT, BUT SERRE BECAME ARGUMENTATIVE AND, IN SANSON'S OPINION, VERY FLIPPANT. HE STATED IT HAD NOT BEEN HIS INTENTION TO DISCHARGE SERRE BECAUSE OF EATING IN THE TEMPLE ROOM,

BUT HE FOUND IT NECESSARY TO DISCHARGE HIM BECAUSE OF HIS RESPONSE TO THE REPRIMAND. SANSON FURTHER TESTIFIED THAT HE WAS UNAWARE OF ANY UNION ACTIVITY THAT SERRE MAY HAVE BEEN ENGAGED IN AROUND THE TIME OF THIS INCIDENT.

18. SERRE TESTIFIED THAT EARLIER ON THE DATE OF THIS DISCHARGE HE HAD BEEN ATTEMPTING TO GET NAMES AND ADDRESSES OF PERSONS WHO WERE INTERESTED IN THE UNION. THERE WAS NO EVIDENCE OFFERED WHICH WOULD INDICATE THAT SANSON HAD ANY KNOWLEDGE OF THIS ACTIVITY.

19. HAVING REGARD TO ALL OF THE EVIDENCE, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT DISCHARGED THE ONUS RESTING ON IT TO ESTABLISH THAT MARCEL SERRE WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, AND THE COMPLAINT, INsofar AS HE IS CONCERNED, IS THEREFORE DISMISSED.

PARTIAL DISSENT OF BOARD MEMBER P. J. O'KEEFFE: APRIL 30, 1968.

1. I DISSENT FROM THE MAJORITY DECISION AS IT RELATES TO MR. FRANK GRELLA. THE REASONS GIVEN BY THE RESPONDENT FOR THE DISCHARGE OF FRANK GRELLA ARE AS FOLLOWS:

(1) HE WAS BECOMING INCREASINGLY UNACCOMMODATING TO CUSTOMERS, AND HE HELD AN IMPORTANT JOB AS STOOL BAR BARTENDER; COMPLAINTS HAD BEEN RECEIVED FROM CUSTOMERS. JUST RECENTLY, MR. ORENSTEIN, PRESIDENT OF CONSOLIDATED HOTEL MANAGEMENT, TOGETHER WITH MRS. ROBINSON AND MR. EBY, HAD BEEN IMPROPERLY SERVED BY HIM THEMSELVES. MR. ORENSTEIN HAD SUGGESTED TO MR. EBY ON THAT OCCASION THAT HE LET MR. GRELLA GO.

(2) SUBSEQUENTLY, MR. GRELLA WAS FOUND TO HAVE BEEN CONDUCTING UNION ORGANIZATION ACTIVITIES ON THE PREMISES AND DURING HIS WORKING HOURS. HE HAD BEEN PREVIOUSLY WARNED IN CONNECTION WITH THIS SAME OFFENCE (SEE TRUE COPY OF LETTER TO HIM HERETO ATTACHED DATED FEBRUARY 24, 1964, WHICH IS SELF-EXPLANATORY).

(3) IN ANY EVENT, THE TALISMAN WAS IN THE PROCESS OF REPLACING BARTENDERS AND BAR WAITERS WITH FEMALE EMPLOYEES, IN "BUNNY" UNIFORMS, AND, AT THE TIME OF MR. GRELLA'S RELEASE, ARRANGEMENTS HAD BEEN MADE FOR AN EXPERIENCED FEMALE BARTENDER WHO HAD INDICATED SHE WAS AVAILABLE FOR THE JOB. IN FACT IT TURNED OUT THAT THIS WOMAN WAS NOT THEN AVAILABLE, BUT SHORTLY THEREAFTER THE TALISMAN HIRED A FEMALE BARTENDER AT THIS STOOL BAR, AND SHE IS THERE NOW.

2. ON THE FIRST REASON THERE WAS NOT A SHRED OF EVIDENCE GIVEN BY THE RESPONDENT TO SUPPORT THIS CHARGE THAT FRANK GRELLA WAS BECOMING INCREASINGLY UNACCOMMODATING TO CUSTOMERS. ON THE CHARGE THAT THERE HAD BEEN COMPLAINTS FROM CUSTOMERS THE RESPONDENT CALLED EVI-

DENCE FROM ONE OF ITS CUSTOMERS, MR. JOHANNES VESSUR. HIS EVIDENCE WAS TO THE EFFECT THAT IN APRIL, 1967, HE HAD COMPLAINED TO THE MANAGEMENT BECAUSE GRELLA HAD USED THE WORDS "BLOODY FOREIGNERS" WHEN HE AND A FRIEND OF HIS WERE BEING SERVED. HE DID NOT KNOW IF MANAGEMENT HAD DONE ANYTHING ABOUT THE COMPLAINT; IN ANY EVENT, SINCE THAT TIME HE AND GRELLA CONTINUED TO EXCHANGE JOKING REFERENCES TO EACH OTHER, SUCH AS VESSUR CALLING GRELLA "A BROKEN-DOWN POLE" AND GRELLA REPLYING BY CALLING VESSUR "A BROKEN-DOWN DUTCH-MAN". VESSUR HAD NEVER COMPLAINED TO GRELLA ABOUT THESE REMARKS; HE CONSIDERED THE EXCHANGE A JOKE BETWEEN THEM. HE SAID THAT GRELLA WAS A TYPICAL EUROPEAN BARMAN AND WAS VERY GOOD.

3. GEORGE BERNABO, HEAD BARTENDER, WHO WAS CALLED AS A WITNESS BY THE RESPONDENT, TESTIFIED THAT HE HAD WORKED WITH GRELLA FOR OVER THREE YEARS; DURING THAT TIME THERE WERE NO SPECIFIC COMPLAINTS AGAINST GRELLA. ON A FEW OCCASIONS HE HAD TOLD HIM NOT TO TALK TOO MUCH. HE TESTIFIED THAT HE HAD NO SAY OR POWER IN THE DISMISSAL OF GRELLA. THE FIRST TIME HE HEARD THAT GRELLA WAS TO BE REPLACED BY A FEMALE BARTENDER WAS ON THE DAY THAT GRELLA WAS DISMISSED.

4. THE RESPONDENT'S WITNESS - MRS. BARBARA SCOTT, WAITRESS - TESTIFIED THAT GRELLA HAD URGED HER TO JOIN THE UNION AND HAD ON SEVERAL OCCASIONS INVITED HER TO GET THE OTHER WAITRESSES INTO THE UNION; SHE HAD RESISTED SUCH ORGANIZATION. SHE SAID THAT GRELLA WAS LOUD, THAT HE JOKES AROUND, KIDS AND SWEARS, BUT HE WAS A VERY GOOD BARTENDER.

5. THE OTHER REASON GIVEN BY THE RESPONDENT WITH REGARD TO REPLACING GRELLA WITH "FEMALE EMPLOYEES, IN 'BUNNY' UNIFORMS" WAS NOT WORTHY OF CONSIDERATION BY THIS BOARD.

6. THE FOREGOING REASONS FOR THE DISCHARGE OF FRANK GRELLA WERE RED HERRINGS THROWN INTO THIS CASE BY THE RESPONDENT TO COVER UP THE ONE AND ONLY REASON FOR GRELLA'S DISCHARGE, WHICH WAS HIS EFFORTS TO HAVE THE EMPLOYEES OF THE RESPONDENT JOIN THE UNION.

7. GRELLA TESTIFIED THAT HIS NORMAL HOURS OF WORK WHILE WORKING ON DAYS WERE FROM 10:00 A.M. TO 5:30 P.M.; HE HAD NO SPECIFIC LUNCH PERIOD AND WOULD EAT STANDING UP BEHIND THE BAR. HE ADMITTED THAT HE HAD ON VARIOUS OCCASIONS HANDED OUT UNION APPLICATION CARDS TO EMPLOYEES OF THE RESPONDENT. HE WAS PRESIDENT OF HIS LOCAL UNION, AND HE NEVER MADE ANY ATTEMPT TO SHIELD THIS FACT FROM THE RESPONDENT OR FROM THE EMPLOYEES. HE WAS A UNIONIST, HE BELIEVED UNIONIZATION OF THE EMPLOYEES OF THE RESPONDENT WOULD BE A GOOD THING, AND HE PURSUED THAT OBJECTIVE; HE HAD, HOWEVER, NEVER LOST TIME FROM WORK BECAUSE OF HIS UNION ACTIVITIES. JOHN MURRAY, A WAITER, HAD ASKED HIM FOR UNION CARDS AND HE HAD GIVEN THEM TO HIM.

8. JOHN MURRAY, WAITER, TESTIFIED THAT GRELLA HAD APPROACHED HIM SEVERAL TIMES ABOUT JOINING THE UNION, THEY HAD HAD CONVERSATIONS FROM TIME TO TIME ABOUT THE UNION, AND THESE CONVERSATIONS WOULD LAST A MINUTE OR SO. HE TESTIFIED THAT GRELLA GAVE HIM TWO BUNDLES OF UNION APPLICATION CARDS A FEW DAYS BEFORE HE WAS FIRED - ONE BUNDLE WAS FOR THE MAID SERVICE AND THE OTHER FOR THE WAITERS. HE GAVE ONE BUNDLE TO A MAID TO DISTRIBUTE TO THE OTHER MAIDS, AND HE GAVE THE SECOND BUNDLE TO MR. SANSON, THE CATERING AND ASSISTANT MANAGER. HE SAID HE GAVE THE CARDS TO SANSON BECAUSE HE FELT IT WAS HIS DUTY TO MANAGEMENT; HE HAD HEARD RUMOURS THAT THE EMPLOYEES WERE NOT ALLOWED TO JOIN THE UNION. WHEN HE GAVE THE CARDS TO SANSON HE WAS TOLD BY SANSON THAT HE WOULD LOOK AFTER THIS.

9. THE EVIDENCE OF ROSS SANSON, CATERING AND ASSISTANT MANAGER, INCLUDED THE FOLLOWING: "FRANK GRELLA WAS DISCHARGED BECAUSE OF HIS UNION ACTIVITIES IN THE HOTEL. HE WAS DISMISSED ON THE 14TH BECAUSE THAT WAS THE DATE HIS UNION ACTIVITIES CAME TO MY NOTICE. JOHN MURRAY GAVE ME THE BUNDLE OF UNION APPLICATION CARDS THE SAME DAY THAT GRELLA WAS FIRED."

10. PLOWING THROUGH ALL OF THE EVIDENCE IN THIS CASE AND CLEARING ASIDE THE CHARGES OF GRELLA'S UNSATISFACTORY WORK RECORD AND HIS REPLACEMENT BY A FEMALE BARTENDER, TOGETHER WITH HIS ALLEGED UNION ACTIVITIES ON THE JOB, IT IS QUITE OBVIOUS THAT THE ONE AND ONLY REASON FOR GRELLA'S DISMISSAL WAS THAT HE GAVE UNION APPLICATION CARDS TO JOHN MURRAY.

11. GRELLA TESTIFIED THAT MURRAY HAD ASKED HIM FOR THE CARDS, WHILE MURRAY SAID THAT GRELLA HAD INITIATED THE UNION DISCUSSION AND HAD GIVEN HIM THE CARDS WITH SPECIFIC INSTRUCTION FOR THEIR USE. THERE IS AN OBVIOUS CONFLICT OF EVIDENCE BETWEEN THESE TWO WITNESSES. I HAVE NO HESITATION IN ACCEPTING GRELLA'S EVIDENCE OVER MURRAY'S. GRELLA WAS OPEN AND ABOVE-BOARD WITH REGARD TO HIS PURSUIT OF UNION REPRESENTATION; WHILE MURRAY TESTIFIED THAT HE HAD HEARD RUMOURS THAT THE EMPLOYEES WERE NOT ALLOWED TO UNIONIZE, AND IT WAS HIS DUTY TO MANAGEMENT TO INFORM THEM ABOUT THE DISTRIBUTION OF UNION CARDS ON THE JOB. HOW COULD WE ACCEPT HIS EVIDENCE THAT HE, THE VERY "LOYAL" EMPLOYEE, ASSISTED IN THE ORGANIZATION OF EMPLOYEES BY DISTRIBUTING UNION CARDS TO THE MAID SERVICE EXCEPT THAT HE WAS DOING IT FOR THE REASON OF SETTING UP GRELLA FOR DISMISSAL BY THE EMPLOYER? TO GO ONE STEP FURTHER, SURELY THIS KIND OF PERSON WHO RUNS OFF TO THE BOSS WITH "EVIDENCE" AGAINST GRELLA IS NOT BEYOND SEEKING THIS EVIDENCE BY WAY OF HIS OWN INITIATIVE IN THE MATTER. GRELLA WAS THE VICTIM OF A JUDAS AND WHILE NOT CRUCIFIED WAS NEVERTHELESS DEALT WITH BY MANAGEMENT CONTRARY TO THE FOLLOWING PROVISIONS OF THE ONTARIO LABOUR RELATIONS ACT:

3. EVERY PERSON IS FREE TO JOIN A TRADE UNION OF HIS OWN CHOICE AND TO PARTICIPATE IN ITS LAWFUL ACTIVITIES.

48. NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION, BUT NOTHING IN THIS SECTION SHALL BE DEEMED TO DEPRIVE AN EMPLOYER OF HIS FREEDOM TO EXPRESS HIS VIEWS SO LONG AS HE DOES NOT USE COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE.

50. NO EMPLOYER, EMPLOYER'S ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYER'S ORGANIZATION,

- (A) SHALL REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY A PERSON, OR DISCRIMINATE AGAINST A PERSON IN REGARD TO EMPLOYMENT OR ANY TERM OR CONDITION OF EMPLOYMENT BECAUSE THE PERSON WAS OR IS A MEMBER OF A TRADE UNION OR WAS OR IS EXERCISING ANY OTHER RIGHTS UNDER THIS ACT;
- (B) SHALL IMPOSE ANY CONDITION IN A CONTRACT OF EMPLOYMENT OR PORPOSE THE IMPOSITION OF ANY CONDITION IN A CONTRACT OF EMPLOYMENT THAT SEEKS TO RESTRAIN AN EMPLOYEE OR A PERSON SEEKING EMPLOYMENT FROM BECOMING A MEMBER OF A TRADE UNION OR EXERCISING ANY OTHER RIGHTS UNDER THIS ACT; OR
- (C) SHALL SEEK BY THREAT OF DISMISSAL, OR BY ANY OTHER KIND OF THREAT, OR BY THE IMPOSITION OF A PECUNIARY OR OTHER PENALTY, OR BY ANY OTHER MEANS TO COMPEL AN EMPLOYEE TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OR OFFICER OR REPRESENTATIVE OF A TRADE UNION OR TO CEASE TO EXERCISE ANY OTHER RIGHTS UNDER THIS ACT.

52. NO PERSON, TRADE UNION OF EMPLOYERS' ORGANIZATION SHALL SEEK BY INTIMIDATION OR COERCION TO COMPEL ANY PERSON TO BECOME OR REFRAIN FROM BECOMING OR TO CONTINUE TO BE OR TO CEASE TO BE A MEMBER OF A TRADE UNION OR OF AN EMPLOYERS' ORGANIZATION OR TO REFRAIN FROM EXERCISING ANY OTHER RIGHTS UNDER THIS ACT OR FROM PERFORMING ANY OBLIGATIONS UNDER THIS ACT.

12. I RESPECTFULLY TAKE ISSUE WITH THE MAJORITY IN THEIR FINDING THAT THE ACTIVITIES OF GRELLA IN THE INSTANT CASE FALL WITHIN THE TERMS OF SECTION 53 OF THE LABOUR RELATIONS ACT, WHICH SECTION READS:

53. NOTHING IN THIS ACT AUTHORIZES ANY PERSON TO ATTEMPT AT THE PLACE AT WHICH AN EMPLOYEE WORKS TO PERSUADE HIM DURING HIS WORKING HOURS TO BECOME OR REFRAIN FROM BECOMING OR CONTINUE TO BE A MEMBER OF A TRADE UNION.

13. I FAIL TO SEE WHY THIS NEGATIVE SECTION OF THE ACT COULD BE USED AS A SWORD AGAINST AN EMPLOYEE WHO WAS INVOLVED IN CAUTIOUS UNION ACTIVITIES DURING WORKING HOURS. SURELY THIS SECTION OF THE ACT COULD NOT HAVE BEEN INTENDED BY THE LEGISLATORS TO NULLIFY THE REST OF THE ACT, PARTICULARLY SECTION 3, 48, 50 AND 52.

14. THE RIGHTS GIVEN TO EMPLOYEES BY THE ACT TO JOIN A UNION AND ENGAGE IN ITS LAWFUL ACTIVITIES ARE ILLUSORY IF SECTION 53 IS TO BE INTERPRETED IN THE WAY THE MAJORITY HAVE FOUND.

15. I SUBMIT THAT IT WAS A LAWFUL ACTIVITY ON THE PART OF FRANK GRELLA WITHIN THE MEANING OF SECTION 3 OF THE LABOUR RELATIONS ACT TO ATTEMPT TO PERSUADE EMPLOYEES TO JOIN A UNION. IT IS A LAWFUL ACTIVITY FOR HIM TO SPEAK TO HIS FELLOW EMPLOYEES ABOUT THE ADVANTAGES OF JOINING A UNION AND TO DISTRIBUTE UNION APPLICATION CARDS TO HIS FELLOW WORKERS. SUCH ACTIVITIES FORM THE WHOLE FOUNDATION OF THE ACT; WITHOUT THEM THE ACT WOULD HAVE NO MEANING OR SOCIAL PURPOSE.

16. I WOULD HAVE REINSTATED FRANK GRELLA TO HIS POSITION WITH THE RESPONDENT WITH COMPENSATION FOR ALL MONIES LOST TO HIM BECAUSE OF THE UNLAWFUL ACT OF THE EMPLOYER IN DISMISSING HIM BECAUSE OF HIS UNION ACTIVITIES.

14191-67-U: UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION 2729
(COMPLAINANTS) v. HAYES-DANA LIMITED; V.N.G. AUTO PARTS LIMITED
(RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: MARTIN LEVINSON, J. SACK AND JOHN FITZPATRICK FOR THE COMPLAINANTS, AND R. A. SMITH, Q.C., D. J. D. SIMS AND G. B. MITCHELL FOR THE RESPONDENTS.

DECISION OF THE BOARD: APRIL 23, 1968.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT THAT THE AGGRIEVED PERSONS NAMED IN THE COMPLAINT HAVE BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTION 50 OF

THE LABOUR RELATIONS ACT. THE COMPLAINANTS REQUEST THAT THE AGGRIEVED PERSONS BE HIRED OR REINSTATED BY THE RESPONDENTS WITH COMPENSATION FOR MONIES AND BENEFITS LOST.

2. THE LIST OF AGGRIEVED PERSONS IN THE COMPLAINT IS AMENDED TO INCLUDE THE NAME OF MARTHA SMITH AS AN AGGRIEVED PERSON.

3. THE COMPLAINT ALLEGES THAT:

IN OR ABOUT THE WEEK OF NOVEMBER 6, 1967 AND CONTINUING THEREAFTER THE AGGRIEVED PERSONS WERE DEALT WITH BY ONE G. B. MITCHELL, PRESIDENT OF THE RESPONDENT HAYES-DANA LIMITED AND BY ONE J. B. McLAUGHLIN OF THE SAME COMPANY'S PERSONNEL DEPARTMENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

THE PARTICULARS OF THE COMPLAINT ARE SET OUT IN APPENDIX B TO THE COMPLAINT AS FOLLOWS:

APPENDIX B

1. HAYES-DANA LIMITED IS A COMPANY INCORPORATED UNDER THE LAWS OF CANADA WITH ITS HEAD OFFICE SITUATED AT THOROLD, ONTARIO AND SUBSIDIARIES LOCATED AT TORONTO AND ST. THOMAS AND ELSEWHERE IN CANADA. THE PERFECT CIRCLE COMPANY LTD. IS A COMPANY INCORPORATED UNDER THE LAWS OF CANADA WITH ITS HEAD OFFICE SITUATED AT TORONTO. IT IS A WHOLLY-OWNED SUBSIDIARY OF THE AFORESAID HAYES-DANA LIMITED. V. N. G. AUTO PARTS LIMITED IS A COMPANY FORMED UNDER THE LAWS OF THE PROVINCE OF ONTARIO WITH ITS HEAD OFFICE AND MANUFACTURING OPERATIONS SITUATED AT ST. THOMAS, ONTARIO. IT ALSO IS A WHOLLY-OWNED SUBSIDIARY OF THE AFORESAID HAYES-DANA LIMITED.

2. IT IS ALLEGED THAT HAYES-DANA LIMITED, BY ITS AGENT AND SUBSIDIARY, THE PERFECT CIRCLE COMPANY LTD., WAS AT ALL MATERIAL TIMES THE EMPLOYER OF THE AGGRIEVED PERSONS. BY A NOTICE DATED NOVEMBER 6, 1967, HAYES-DANA LIMITED, BY ITS PRESIDENT, G. B. MITCHELL, ADVISED THE AGGRIEVED PERSONS THAT THEIR EMPLOYMENT WITH THE PERFECT CIRCLE COMPANY LTD. WOULD BE TERMINATED WITH ONE WEEK'S NOTICE AND INSTRUCTED THOSE EMPLOYEES WHO DESIRED JOBS WITH OTHER DIVISIONS OF HAYES-DANA LIMITED TO CONTACT ONE J. B. McLAUGHLIN OF THE HAYES-DANA LIMITED PERSONNEL DEPARTMENT.

3. IN OR ABOUT THE WEEK OF NOVEMBER 6, 1967, THE AGGRIEVED PERSONS APPROACHED THE SAID J. B. McLAUGHLIN,

INDIVIDUALLY OR BY THEIR REPRESENTATIVES, FOR THE PURPOSE OF OBTAINING EMPLOYMENT OR CONTINUATION OF THEIR EMPLOYMENT AT THE ST. THOMAS SITE MENTIONED IN THE AFORESAID NOTICE OF NOVEMBER 6, 1967. THE SAID McLAUGHLIN ADVISED THE EMPLOYEES, DIRECTLY OR THROUGH THEIR UNION REPRESENTATIVES, THAT THEY WOULD NOT BE GIVEN JOBS OR CONTINUED IN EMPLOYMENT AT ST. THOMAS BECAUSE THEY WERE MEMBERS OF THE UNITED STEELWORKERS OF AMERICA AND NOT MEMBERS OF ANOTHER UNION ALREADY ESTABLISHED AT THE ST. THOMAS SITE. THE SAID McLAUGHLIN ALSO GAVE AS A REASON FOR REFUSING TO EMPLOY OR TO CONTINUE TO EMPLOY THE AGGRIEVED PERSONS AT THE ST. THOMAS SITE THAT ALL OF THE JOBS AT THE ST. THOMAS SITE WERE FILLED AND THAT NO JOBS WERE AVAILABLE. IN FACT, JOBS WERE AVAILABLE AT THE ST. THOMAS SITE WHICH THE AGGRIEVED EMPLOYEES WERE ABLE TO DO, BUT PERSONS OTHER THAN THE AGGRIEVED EMPLOYEES WERE HIRED TO FILL THEM. FURTHERMORE, THE SAID McLAUGHLIN ADMITTED THAT THE RESPONDENT, HAYES-DANA LIMITED, WAS ATTEMPTING TO AVOID THE EFFECTS OF THE COLLECTIVE AGREEMENT BETWEEN ITS AGENT AND SUBSIDIARY. THE PERFECT CIRCLE COMPANY LTD., AND THE UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION 2729.

4. THE AFORESAID AGREEMENT DATED JUNE 29, 1967, PROVIDES IN ARTICLE 1.03 AS FOLLOWS:

"1.03 IN THE EVENT ANY OF THE PRESENT OPERATIONS ARE MOVED TO A LOCATION OUTSIDE METROPOLITAN TORONTO, THE COMPANY AGREES TO RECOGNIZE THE UNION AS THE BARGAINING AGENT FOR THE EMPLOYEES AS DESCRIBED HEREIN AT ANY POINT IN ONTARIO AND FURTHER AGREES TO EXTEND THIS AGREEMENT TO THAT LOCATION UNTIL SUCH TIME AS THE LABOUR RELATIONS BOARD FOR THE PROVINCE OF ONTARIO DETERMINES THAT THE UNION NO LONGER REPRESENTS EMPLOYEES IN THAT LOCATION BECAUSE OF AN ACTION UNDER SECTION 47A SUBSECTION 5 OF THE LABOUR RELATIONS ACT."

5. IN ORDER TO AVOID THE EFFECTS OF THE ABOVE NOTED TERM OF THE COLLECTIVE AGREEMENT, HAYES-DANA LIMITED FORMED V.N.G. AUTO PARTS LIMITED, THEN TERMINATED THE MANUFACTURING OPERATIONS OF THE PERFECT CIRCLE COMPANY LTD. AND CAUSED THESE OPERATIONS TO BE RESUMED BY ITS AGENT AND SUBSIDIARY, THE AFORESAID V.N.G. AUTO PARTS LIMITED.

6. IT IS ALLEGED THAT HAYES-DANA LIMITED, BY ITSELF AND ITS AGENTS, THE PERFECT CIRCLE COMPANY LTD. AND V.N.G. AUTO PARTS LIMITED, REFUSED TO EMPLOY OR TO CONTINUE TO EMPLOY THE AGGRIEVED PERSONS BECAUSE OF THEIR

MEMBERSHIP IN THE UNITED STEELWORKERS OF AMERICA AND IN ORDER TO AVOID THE EFFECTS OF THE ABOVE NOTED TERM OF THE COLLECTIVE AGREEMENT.

7. ALTERNATIVELY, IT IS ALLEGED, ON THE BASIS OF THE FACTS SET OUT ABOVE, THAT V.N.G. AUTO PARTS LIMITED, AN AGENT AND SUBSIDIARY OF HAYES-DANA LIMITED, REFUSED TO EMPLOY THE AGGRIEVED PERSONS BECAUSE OF THEIR MEMBERSHIP IN THE UNITED STEELWORKERS OF AMERICA AND IN ORDER TO AVOID THE EFFECT OF THE ABOVE NOTED TERM OF THE COLLECTIVE AGREEMENT.

4. THE FOLLOWING FURTHER PARTICULARS WERE ALSO FILED:

NOTICE OF PARTICULARS

TAKE NOTICE THAT THE COMPLAINANTS INTEND TO ALLEGE THE FOLLOWING FACTS IN ADDITION TO THOSE SET OUT IN THE COMPLAINT ITSELF.

1. AT A MEETING ATTENDED BY THE AGGRIEVED EMPLOYEES IN OR ABOUT THE MONTH OF JUNE 1967, ONE HUBERT E. LANGFORD, VICE-PRESIDENT OF HAYES-DANA LIMITED, INFORMED THE EMPLOYEES, WHO AT THAT TIME WERE CONCERNED ABOUT THE POSSIBILITY THAT THE OPERATIONS OF THE PERFECT CIRCLE COMPANY LTD. MIGHT BE MOVED TO ST. THOMAS, THAT IF THE OPERATIONS WERE MOVED TO ST. THOMAS THE EMPLOYEES WOULD BE CONTINUED IN EMPLOYMENT AT ST. THOMAS. THIS REPRESENTATION WAS REPEATED TO THE REPRESENTATIVES OF THE EMPLOYEES. ON JUNE 29, 1967, THE SAID LANGFORD SIGNED A COLLECTIVE AGREEMENT WITH THE COMPLAINANTS ON BEHALF OF THE PERFECT CIRCLE COMPANY LTD. THIS AGREEMENT PROVIDED IN ARTICLE 1.03 THAT, IN THE EVENT ANY OF THE PRESENT OPERATIONS WERE MOVED TO A LOCATION OUTSIDE METROPOLITAN TORONTO, THE COMPANY WOULD RECOGNIZE THE UNION AS THE BARGAINING AGENT FOR THE EMPLOYEES AT ANY POINT IN ONTARIO AND WOULD EXTEND THE AGREEMENT TO THAT LOCATION.

2. IN OR ABOUT THE WEEK OF NOVEMBER 6, 1967, ONE G. B. MITCHELL, PRESIDENT OF HAYES-DANA LIMITED, STATED TO CERTAIN PERSONS THAT THE PURPOSE OF THE TRANSACTIONS UNDERTAKEN BY HAYES-DANA LIMITED, INVOLVING THE ESTABLISHMENT OF V.N.G. AUTO PARTS LIMITED AND THE CONTINUATION BY THE SAID V.N.G. AUTO PARTS LIMITED OF THE MANUFACTURING OPERATIONS OF THE PERFECT CIRCLE COMPANY LTD., WAS TO AVOID THE CONSEQUENCES OF THE AFORESAID COLLECTIVE AGREEMENT.

3. AT A MEETING OF COMPANY AND UNION REPRESENTATIVES SPONSORED BY THE MANPOWER CONSULTATIVE SERVICES BRANCH OF THE FEDERAL DEPARTMENT OF LABOUR ON NOVEMBER 15 AND NOVEMBER 20, 1967, ONE J.B. McLAUGHLIN OF THE HAYES-DANA LIMITED PERSONNEL DEPARTMENT STATED THAT HAYES-DANA LIMITED HAD NO INTENTION OF CONTINUING ANY OF THE AGGRIEVED PERSONS IN EMPLOYMENT AT ST. THOMAS. AT THE MEETING WHICH TOOK PLACE ON NOVEMBER 20, 1967, THE SAID McLAUGHLIN ALSO STATED THAT EMPLOYEES WERE BEING HIRED FROM APPROXIMATELY 300 WHO HAD MADE APPLICATIONS FOR JOBS AT ST. THOMAS, BUT THAT NO JOBS WOULD BE GIVEN TO THE AGGRIEVED EMPLOYEES.

5. IN A DECISION DATED FEBRUARY 26, 1968 THE BOARD FOUND IT ADVISABLE TO DISPENSE WITH AN INQUIRY BY A FIELD OFFICER AND DIRECTED THE REGISTRAR TO LIST THE COMPLAINT FOR HEARING. AT THE HEARING HELD IN THIS MATTER ON MARCH 21ST, 1968, EVIDENCE AND ARGUMENT WERE LIMITED TO CERTAIN PRELIMINARY OBJECTIONS RAISED BY THE RESPONDENTS IN PARAGRAPH 2 OF THEIR REPLY. THE BOARD NOTES THAT AT THE HEARING COUNSEL FOR THE RESPONDENTS WITHDREW THE OBJECTION SET OUT IN PARAGRAPH 2(c) OF THE REPLY.

6. THE OBJECTION RAISED IN PARAGRAPH 2(b) IS WITH RESPECT TO DELAY IN FILING THE COMPLAINT. THE ACTS COMPLAINED OF ARE ALLEGED TO HAVE OCCURRED IN OR ABOUT THE WEEK OF NOVEMBER 6TH, 1967, WHILE THE COMPLAINT WAS NOT FILED WITH THE BOARD UNTIL FEBRUARY 22ND, 1968. HOWEVER, IT HAS NOT BEEN THE PRACTICE OF THE BOARD TO REFUSE TO HEAR A COMPLAINT UNDER SECTION 65 BECAUSE OF DELAY IN LODGING THE COMPLAINT EXCEPT IN THE MOST EXTREME CASES. WHERE UNREASONABLE DELAY HAS OCCURRED THE BOARD IN MOST CASES HAS FOLLOWED THE PRACTICE OF TAKING THIS FACTOR INTO ACCOUNT IN ASSESSING ANY COMPENSATION WHICH MIGHT BE AWARDED. ON THE EVIDENCE BEFORE US IN THE PRESENT COMPLAINT WE ARE SATISFIED THAT THIS IS NOT AN EXTREME CASE WARRANTING OUTRIGHT DISMISSAL BUT, RATHER, SO FAR AS THE PARTIES, INCLUDING THE AGGRIEVED PERSONS, ARE CONCERNED, ONE IN WHICH ANY PREJUDICE RESULTING FROM UNREASONABLE DELAY CAN BE DEALT WITH EQUITABLY IF AND WHEN IT IS DECIDED THAT THE AGGRIEVED PERSONS ARE ENTITLED TO RELIEF.

7. THE RESPONDENTS ALSO SUBMIT THAT THE BOARD OUGHT NOT TO ENTERTAIN THE COMPLAINT BY REASON OF EXISTING BOARD POLICY AS SET OUT IN SUCH CASES AS SCARBOROUGH BOARD OF EDUCATION, O.L.R.B. MONTHLY REPORT, JANUARY 1967, P. 322, AND OTHERS. THESE CASES ESTABLISH THE PROPOSITION THAT WHERE A REMEDY IS AVAILABLE TO AN AGGRIEVED PERSON UNDER THE GRIEVANCE AND ARBITRATION PROCEDURES IN A COLLECTIVE AGREEMENT, THE BOARD WILL, IN ITS DISCRETION, REFUSE TO ENTERTAIN A COMPLAINT CONCERNING THE SAME MATTERS. THIS POLICY IS SUBJECT TO CERTAIN EXCEPTIONS NOT MATERIAL IN THIS COMPLAINT.

8. IT IS ADMITTED THAT THE AGGRIEVED PERSONS HEREIN HAVE ALL FILED GRIEVANCES UNDER THE COLLECTIVE AGREEMENT REFERRED TO ABOVE IN THE COMPLAINT. THE GRIEVANCES OF COURSE ARE AGAINST THE PERFECT CIRCLE COMPANY LTD., HEREINAFTER REFERRED TO AS "PERFECT CIRCLE", WHICH IS NOT A PARTY TO THE PROCEEDINGS. THE GRIEVORS SOUGHT BOTH RECALL AND DAMAGES FOR VIOLATION OF ARTICLE 1.03 (SET OUT SUPRA) OF THE COLLECTIVE AGREEMENT. SUBSEQUENTLY THEY ABANDONED THEIR CLAIM FOR RECALL ON THE GROUND THAT THERE WERE NO JOBS TO WHICH THEY COULD BE RECALLED. THE GRIEVANCES HAVE BEEN PROCESSED THROUGH TO ARBITRATION. AN ARBITRATION BOARD HAS BEEN ESTABLISHED, HAS HAD A PRELIMINARY MEETING WITH THE PARTIES AND ITS FIRST HEARING WAS SCHEDULED FOR MARCH 26TH, 1968.

9. THE RESPONDENTS SUBMIT THAT, IN ESSENCE, THE COMPLAINT IS THAT HAYES-DANA LIMITED, HEREINAFTER REFERRED TO AS "HAYES-DANA", AS AN UNDISCLOSED PRINCIPAL ACTING THROUGH ITS AGENT, PERFECT CIRCLE, IS THE REAL EMPLOYER AND PARTY TO THE COLLECTIVE AGREEMENT AND, IF SO, THE AGGRIEVED PERSONS IN THE COMPLAINT HAD THEIR OPPORTUNITY TO SEEK RELIEF AGAINST HAYES-DANA UNDER THE COLLECTIVE AGREEMENT AND THE PRESENT COMPLAINT SHOULD NOT THEREFORE BE ENTERTAINED. IT IS SUBMITTED, FURTHER, THAT TO PERMIT THE PRESENT PROCEEDINGS TO CONTINUE MIGHT WELL RESULT IN DOUBLE JEOPARDY OR DAMAGES.

10. ASSUMING THE RESPONDENT IS CORRECT IN ITS INTERPRETATION OF THE COMPLAINT, THIS WOULD ONLY RELATE TO THE ALLEGATION THAT HAYES-DANA REFUSED TO CONTINUE TO EMPLOY THE AGGRIEVED PERSONS AND NOT TO THE ALLEGATION THAT IT REFUSED TO EMPLOY THEM BECAUSE OF THEIR MEMBERSHIP IN THE UNITED STEELWORKERS OF AMERICA. THIS LATTER ALLEGATION CLEARLY REFERS TO EVENTS WHICH COULD NOT BE THE SUBJECT OF A GRIEVANCE UNDER THE COLLECTIVE AGREEMENT.

11. FURTHERMORE, IT SHOULD BE NOTED THAT IT IS THE RESPONDENTS WHICH CONSTRUE THE COMPLAINT AS ONE BASED ON THE UNDISCLOSED PRINCIPAL THEORY. THE COMPLAINANTS TAKE THE POSITION THAT THE COLLECTIVE AGREEMENT IN QUESTION IS WITH PERFECT CIRCLE, WHICH COMPANY DID NOT SIGN AS AGENT BUT AS A PRINCIPAL, AND THUS THE COMPLAINANTS ARE IN NO POSITION TO SEEK RELIEF AGAINST HAYES-DANA IN THE ARBITRATION PROCEEDINGS. THEY ARGUE FURTHER THAT V.N.G. AUTO PARTS LIMITED, HEREINAFTER REFERRED TO AS "V.N.G.", IS NOT BOUND BY THE AGREEMENT AND CONSEQUENTLY THE COMPLAINANTS CANNOT GET AN ORDER FROM THE ARBITRATION BOARD AS AGAINST THAT COMPANY FOR CONTINUED EMPLOYMENT.

12. THE COMPLAINANTS SUBMIT THAT WHEN THE COMPLAINT REFERS TO HAYES-DANA AS THE EMPLOYER AND TO PERFECT CIRCLE AND V.N.G. AS AGENTS, THIS REFERENCE IS NOT TO THE UNDISCLOSED PRINCIPAL THEORY BUT RATHER TO THE POWER OF A PARENT COMPANY TO CONTROL ITS SUBSIDIARIES. THE COMPLAINANTS ARE NOT ASKING THE BOARD TO DIRECT HAYES-DANA TO EMPLOY THE AGGRIEVED PERSONS BUT, RATHER, TO DIRECT THAT

COMPANY TO ORDER V.N.G. TO EMPLOY THEM OR TO CONTINUE TO EMPLOY THEM. IN SHORT, THE COMPLAINT IS THAT HAYES-DANA, NOT DIRECTLY AS AN EMPLOYER BUT THROUGH ITS ALLEGED POWER TO CONTROL ITS SUBSIDIARIES, ATTEMPTED TO GET AROUND ARTICLE 1.01 OF THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANTS AND PERFECT CIRCLE AND, IN SO DOING, IN EFFECT CAUSED V.N.G. TO REFUSE TO EMPLOY OR TO CONTINUE TO EMPLOY THE AGGRIEVED PERSONS.

13. AFTER CAREFULLY CONSIDERING THE REPRESENTATIONS OF THE PARTIES WE ARE SATISFIED THAT THE COMPLAINT IS OPEN TO THE CONSTRUCTION PLACED ON IT BY THE COMPLAINANTS. CLEARLY THE COMPLAINT WAS DRAWN HAVING REGARD TO THE DECISION OF THE BOARD IN THE LOBLAW GROCETERIAS Co. LIMITED CASE, 66 CLLC PAR. 16,078. MOREOVER, IT WOULD APPEAR TO BE OPEN TO ARGUMENT THAT SECTION 50 OF THE ACT IS COUCHED IN SUFFICIENTLY WIDE TERMS TO COVER THE POSITION TAKEN BY THE COMPLAINANTS. FINALLY, IT SHOULD BE NOTED THAT THE COMPLAINANTS' CASE, AS WE UNDERSTAND IT, DOES NOT REQUIRE THE BOARD TO CONSTRUER ARTICLE 1.03 OF THE COLLECTIVE AGREEMENT. WE HAVE THEREFORE COME TO THE CONCLUSION THAT AT THIS STAGE OF THE PROCEEDINGS WE OUGHT NOT TO GIVE EFFECT TO THE RESPONDENTS' OBJECTIONS BASED ON THE SCARBOROUGH BOARD OF EDUCATION AND OTHER CASES. HOWEVER, WE ARE NOT FORECLOSING THE RESPONDENTS ON THIS POINT AND IF THEY SEE FIT THEY WILL BE ENTITLED TO RAISE THE MATTER AGAIN IN FINAL ARGUMENT.

14. WITH RESPECT TO THE QUESTION OF DOUBLE JEOPARDY OR DAMAGES, IT WAS CONCEDED BY THE COMPLAINANTS THAT THIS WAS A POSSIBILITY. IN OUR JUDGMENT THIS IS REALLY A MATTER OF CONJECTURE AT THIS STAGE OF THE PROCEEDINGS AND IS BETTER LEFT TO BE DEALT WITH IN FINAL ARGUMENT.

15. THE RESPONDENTS ALSO ARGUED THAT THE COMPLAINT FAILED TO ALLEGE THAT THE AGGRIEVED PERSONS WERE SPECIFICALLY, THAT IS INDIVIDUALLY, REFUSED EMPLOYMENT. WE ARE SATISFIED THAT PARAGRAPH 3 OF APPENDIX B TO THE COMPLAINT RAISES THE ISSUE AND THE QUESTION THUS BECOMES ONE OF EVIDENCE OR PROOF, NOT JURISDICTION.

16. FINALLY, THE RESPONDENTS SUBMIT THAT THE COMPLAINT SHOULD BE DISMISSED AGAINST V.N.G. ON THE GROUND THAT IT DOES NOT ALLEGE ANY WRONGDOING ON THE PART OF V.N.G. OR GIVE ANY PARTICULARS THEREOF. THE SHORT ANSWER TO THIS OBJECTION IS TO BE FOUND IN THE NATURE OF THE CASE WHICH THE COMPLAINANTS ARE SEEKING TO ESTABLISH AS SET OUT ABOVE. ADDITIONALLY, NO DOUBT, IT WOULD BE OPEN TO THE COMPLAINANTS TO ESTABLISH AND ARGUE THAT THE NAMED PERSONS WHO DEALT WITH THE AGGRIEVED PERSONS DIRECTLY OR INDIRECTLY DID SO AS PERSONS ACTING "ON BEHALF OF AN EMPLOYER" WITHIN THE MEANING OF SECTION 50 OF THE ACT. IN OUR VIEW, THE COMPLAINT AS DRAWN IS WIDE ENOUGH TO PERMIT THE CONTINUATION OF THE PROCEEDINGS AGAINST V.N.G.

17. IN THIS CONNECTION AND IN CONNECTION WITH ALL THE OBJECTIONS RAISED WE THINK IT DESIRABLE TO POINT OUT THAT IN PROCEEDINGS BEFORE THE BOARD WE ARE NOT CONCERNED WITH THE SAME STRICTNESS OF PLEADING THAT IS SOME TIMES ENCOUNTERED IN COURT PROCEEDINGS. IT MUST NOT BE FORGOTTEN THAT PERSONS UNTRAINED IN THE LAW ARE ENTITLED TO AND DO IN FACT FILE APPLICATIONS AND COMPLAINTS WITH THE BOARD AND ALSO CARRY THE PROCEEDINGS THROUGH TO COMPLETION. THE BOARD HAS ALWAYS ADOPTED A LIBERAL ATTITUDE IN THESE MATTERS IN THE INTERESTS OF JUSTICE. IN THE PRESENT CASE THE RESPONDENTS, IF NOT INITIALLY APPRECIATING IN FULL THE NATURE OF THE COMPLAINT, ARE NO LONGER IN THAT POSITION AND SHOULD SUFFER NO PREJUDICE NOW IN PREPARING THEIR DEFENCE.

18. IN THE RESULT, THE BOARD IS OF THE OPINION THAT THIS COMPLAINT SHOULD PROCEED TO A HEARING ON THE MERITS. WHILE WE CONSIDERED POSTPONING THE HEARING UNTIL COMPLETION OF THE ARBITRATION PROCEEDINGS, WE HAVE DECIDED AGAINST DOING SO FOR TWO REASONS. IN THE FIRST PLACE, AS WE FOUND ABOVE, THERE ARE CLEARLY SOME ISSUES IN THE COMPLAINT WHICH CANNOT ARISE IN THE ARBITRATION PROCEEDINGS. SECONDLY, DELAY WOULD PREJUDICE NOT ONLY THE AGGRIEVED PERSONS BUT THE RESPONDENTS AS WELL, SHOULD THE BOARD ULTIMATELY FIND AGAINST THEM.

19. IN CONCLUSION WE WOULD LIKE TO STRESS THAT WE HAVE BEEN DEALING ONLY WITH PRELIMINARY OBJECTIONS AND NOTHING CONTAINED HEREIN SHOULD BE TAKEN AS INDICATING THAT WE HAVE IN ANY WAY FORMED ANY CONCLUSIONS ON THE MERITS OF THE COMPLAINT.

20. THE REGISTRAR IS DIRECTED TO LIST THIS COMPLAINT FOR CONTINUATION OF HEARING.

14221-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) V. WHITBY BOAT WORKS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: T. E. ARMSTRONG AND H. BENSON FOR THE COMPLAINANT, G. E. VICKERS FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE: APRIL 9, 1968.

1. THIS IS A COMPLAINT MADE PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT.

2. THE UNCONTROVERTED EVIDENCE IN THIS CASE CLEARLY ESTABLISHED THAT THE RESPONDENT THROUGH ITS OFFICIALS OR AGENTS ANNOUNCED THE RESPONDENT'S OPPOSITION TO THE UNION AND THE SUPPORTERS OF THE UNION. MR. HERBERT BURTON, THE AGGRIEVED PERSON, WAS ADVISED BY MR. HANSEN ON BEHALF OF THE RESPONDENT THAT HE WOULD BE DISCHARGED FOR HIS ACTIVITIES IN SUPPORT OF THE UNION AND THAT IT WAS JUST A MATTER OF TIME UNTIL HE MADE A MISTAKE WHICH WOULD AFFORD THE RESPONDENT AN OPPORTUNITY TO EFFECT HIS DISCHARGE.

3. EVEN IF WE WERE TO ACCEPT THE RESPONDENT'S EVIDENCE THAT THE MISTAKES ATTRIBUTED TO MR. BURTON WERE IN FACT MADE BY HIM (AND THERE IS CONSIDERABLE DOUBT ON THIS POINT), IT IS ABUNDANTLY CLEAR THAT WHILE SUCH MISTAKES WERE USED BY THE RESPONDENT AS THE EXCUSE TO DISCHARGE MR. BURTON, THE REAL REASON FOR HIS DISCHARGE, AS PREVIOUSLY ANNOUNCED BY MR. HANSEN, WAS THAT HE WAS DISCHARGED FOR SUPPORTING THE UNION'S EFFORTS TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THE COMPLAINANT HAS THEREFORE SATISFIED THE ONUS ON IT OF ESTABLISHING THAT MR. BURTON WAS DISCHARGED BY THE RESPONDENT CONTRARY TO SECTIONS 50 AND 52 OF THE ACT.

4. WHILE IT IS RECOGNIZED THAT BECAUSE OF THE UNREASONING ATTITUDE OF MR. HANSEN, THERE HAS BEEN CREATED A STATE OF ANIMOSITY BETWEEN MR. HANSEN AND MR. BURTON WHICH WILL MAKE MR. BURTON'S PRESENCE IN THE PLANT VERY DIFFICULT, THAT FACT CANNOT DEPRIVE MR. BURTON OF HIS RIGHT TO REINSTATEMENT. IF THE BOARD WERE TO ACCEDE TO THE RESPONDENT'S SUGGESTION THAT COMPENSATION BE AWARDED IN LIEU OF REINSTATEMENT, THE RESPONDENT WOULD SUCCEED IN ACCOMPLISHING WHAT IT SET OUT TO DO CONTRARY TO THE PURPOSE AND INTENT OF THE ACT.

5. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD THEREFORE FINDS THAT HERBERT BURTON WAS DISCHARGED BY THE RESPONDENT ON FEBRUARY 27TH, 1968, CONTRARY TO THE LABOUR RELATIONS ACT.

6. THE BOARD DETERMINES THAT

- (A) HERBERT BURTON SHALL BE REINSTATED FORTHWITH IN THE POSITION HELD BY HIM AT THE TIME OF HIS DISCHARGE;
- (B) THAT THE RESPONDENT PAY TO HERBERT BURTON THE SUM OF \$475.00 FORTHWITH AS COMPENSATION FOR LOSS OF EARNINGS BETWEEN THE DATE OF HIS DISCHARGE AND THE DATE OF THE HEARING IN THIS MATTER;
- (C) THAT THE PARTIES MEET FORTHWITH WITH A VIEW OF AGREEING ON THE AMOUNT OF THE LOSS OF EARNINGS THAT HERBERT BURTON SUSTAINED BY REASON OF HIS HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN MARCH 25TH, 1968, THE DATE OF THE HEARING IN THIS MATTER, AND THE DATE OF HIS REINSTATEMENT; AND

- (D) IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT REFERRED TO IN PARAGRAPH (C) HEREOF WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNT TO BE PAID TO HERBERT BURTON.

DECISION OF BOARD MEMBER H. F. IRWIN:

APRIL 9, 1968.

1. I DISSENT IN SO FAR AS REINSTATEMENT IN EMPLOYMENT IS CONCERNED.

2. SECTION 65(4) OF THE LABOUR RELATIONS ACT CONTEMPLATES THAT THERE MAY BE DIFFICULTIES CREATED IN ORDERING REINSTATEMENT OF THE EMPLOYEE IN CERTAIN INSTANCES AND SPECIFICALLY STATES THAT THE BOARD'S DETERMINATION MAY INCLUDE COMPENSATION IN LIEU OF REINSTATEMENT FOR LOSS OF EARNINGS AND OTHER EMPLOYMENT BENEFITS.

3. IN THE INSTANT CASE, THERE WOULD APPEAR TO BE COMPLETE INCOMPATIBILITY BETWEEN THE AGGRIEVED EMPLOYEE, HERBERT BURTON, AND THE OWNER OF THE ESTABLISHMENT, MR. KURT HANSEN. MOREOVER, BURTON HAS NOW SECURED EMPLOYMENT WITH ANOTHER EMPLOYER AT 55¢ PER HOUR HIGHER PAY THAN HE WAS RECEIVING AT THE TIME OF HIS DISMISSAL FROM THE RESPONDENT. BASED ON A 40 HOUR WEEK, THIS WOULD AMOUNT TO \$22.00 PER WEEK OF \$96.80 PER MONTH EXTRA PAY TO BURTON THAN HE WOULD BE ENTITLED TO RECEIVE FROM HIS FORMER EMPLOYER IF REINSTATEMENT WAS ORDERED.

4. IT SEEMS TO ME THAT THIS IS THE TYPE OF SITUATION WHERE THE BOARD SHOULD EXERCISE ITS DISCRETION TO ORDER COMPENSATION IN LIEU OF REINSTATEMENT. I WOULD HAVE DIRECTED THAT HERBERT BURTON BE REIMBURSED FOR LOSS OF EARNINGS IN THE AMOUNT OF \$500. AND THAT THIS AMOUNT BE PAID TO HIM FORTHWITH AS COMPLETE AND FINAL SETTLEMENT OF THIS GRIEVANCE.

14262-67-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220 (COMPLAINANT) v. CENTRE GREY GENERAL HOSPITAL (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: JOHN M. ASKIN FOR THE COMPLAINANT, N. L. MATHEWS, Q.C., J. HIGGINS AND F. R. VON VEI FOR THE RESPONDENT.

DECISION OF THE BOARD:

APRIL 18, 1968.

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3. THIS IS A COMPLAINT MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT THE RESPONDENT DEALT WITH THE AGGRIEVED PERSON, MARGARET PATTON, CONTRARY TO THE PROVISIONS OF SECTIONS 48, 50, 52, 53, AND 59 OF THE LABOUR RELATIONS ACT AND CONTRARY TO SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT.

4. THE PARTIES AGREED AT THE HEARING IN THIS MATTER THAT THE AGGRIEVED PERSON, MARGARET PATTON, AT THE TIME OF THE ALLEGED OFFENCES WAS THE LAUNDRY MANAGER. BY A DECISION DATED NOVEMBER 10TH, 1967, THE BOARD CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT. IN ITS DECISION THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE LAUNDRY MANAGER WAS NOT AN EMPLOYEE FOR PURPOSES OF THE ACT AND WAS NOT INCLUDED IN THE BARGAINING UNIT. THE PARTIES IN THE INSTANT COMPLAINT FURTHER AGREED THAT THE AGGRIEVED PERSON AT THE TIME OF THE ALLEGED OFFENCES WAS GIVEN HER CHOICE OF REMAINING AS A MEMBER OF MANAGEMENT OR OF BECOMING A MEMBER OF THE BARGAINING UNIT. MARGARET PATTON, IT IS AGREED ELECTED, IN WRITING, TO BECOME A BARGAINING UNIT EMPLOYEE.

5. THE COMPLAINANT ALLEGES THAT UPON AGREEING IN WRITING TO BECOME A MEMBER OF THE BARGAINING UNIT, THE RESPONDENT REDUCED HER WAGES ALTHOUGH THE CONTENT OF HER JOB REMAINED THE SAME. THE RESPONDENT'S SUBMISSION IS THAT SUBSEQUENT TO HER ELECTION TO BECOME A MEMBER OF THE BARGAINING UNIT, THE AGGRIEVED PERSON, IN FACT, WAS DEMOTED TO THE CLASSIFICATION OF LAUNDRY MAID AND CEASED TO EXERCISE MANAGERIAL FUNCTIONS.

6. THE RESPONDENT SUBMITS THAT SINCE AT THE TIME THE ALLEGED OFFENCES ARE PURPORTED TO HAVE OCCURRED MARGARET PATTON EXERCISED MANAGERIAL FUNCTIONS AND WAS NOT AN EMPLOYEE WITHIN THE MEANING OF THE ACT, THE BOARD IS WITHOUT JURISDICTION TO ENTERTAIN THE COMPLAINT.

7. THE SUPREME COURT OF CANADA IN THE JARVIS (BARBARA) V. ASSOCIATED MEDICAL SERVICES LTD. CASE [1964] CANADIAN LABOUR LAW CASES, VOL 2, 1960-1964, ¶15,511, HELD THAT UNDER SECTION 65(4) OF THE LABOUR RELATIONS ACT, ONCE THE BOARD DETERMINED THAT THE COMPLAINANT OR AGGRIEVED PERSON WAS DEEMED NOT TO BE AN EMPLOYEE FOR THE PURPOSES OF THE ACT, IT HAD IPSO FACTO DEMONSTRATED ITS LACK OF JURISDICTION TO PROCEED WITH THE COMPLAINT. THIS IS EXACTLY THE CIRCUMSTANCES THAT EXIST IN THE INSTANT CASE. THE BOARD IN ITS DECISION OF NOVEMBER 10TH, 1967 ACCEPTED THE AGREEMENT OF THE PARTIES THAT THE AGGRIEVED PERSON, AS OF THE DATE OF THE MAKING OF THE APPLICATION FOR CERTIFICATION, WAS NOT AN EMPLOYEE FOR PURPOSES OF THE ACT. THIS AGREEMENT IS BINDING UPON THE PARTIES. FURTHER, AS OF THE DATE OF THE OFFENCES ALLEGED BY THE COMPLAINANT TO HAVE BEEN COMMITTED BY THE RESPONDENT, THE AGGRIEVED PERSON STILL WAS NOT AN EMPLOYEE FOR PURPOSES OF THE ACT. THE BOARD

THEREFORE IS WITHOUT JURISDICTION TO ENTERTAIN THE COMPLAINT.

8. THE COMPLAINT, ACCORDINGLY, IS DISMISSED.

14286-67-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. CANUSA COATING SYSTEMS LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: APRIL 18, 1968.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. FOLLOWING THE FILING OF THE COMPLAINT THE BOARD, ACTING UNDER SECTION 65 AND IN ACCORDANCE WITH ITS USUAL PRACTICE, APPOINTED A FIELD OFFICER TO INQUIRE INTO THE COMPLAINT.

2. THE FIELD OFFICER INTERVIEWED THE AGGRIEVED PERSONS AND THEN ATTENDED ON THE RESPONDENT IN ORDER TO SERVE HIM WITH A COPY OF THE COMPLAINT, AS PROVIDED BY SECTION 29 OF THE BOARD'S RULES OF PROCEDURE. THE RESPONDENT DID NOT DISCUSS THE MATTER WITH THE FIELD OFFICER AND REFERRED HIM TO ITS SOLICITOR. SUBSEQUENTLY, THE SOLICITOR MET WITH THE FIELD OFFICER, WHO HAS REPORTED THAT HE WAS UNABLE TO EFFECT A SETTLEMENT.

3. THE SOLICITOR FOR THE RESPONDENT SUBSEQUENTLY WROTE THE BOARD ALLEGING THAT THE AUTHORITY DELEGATED TO THE FIELD OFFICER WAS IMPROPER AND REQUESTING THE BOARD TO CONVENE A HEARING FOR ARGUMENT AND FOR RECONSIDERATION OF ITS DECISION APPOINTING THE FIELD OFFICER AND ASKING, FURTHER, THAT THE COMPLAINT BE DISMISSED. THE RESPONDENT TOOK THE POSITION THAT IT WAS UNABLE TO REPLY TO THE COMPLAINT BECAUSE IT FAILED TO ESTABLISH A SPECIFIC RELATIONSHIP OF THE NATURE OF THE ACT OR OMISSION COMPLAINED OF TO THE MANY SPECIFIC, DETAILED AND UNFAIR PRACTICES FOUND UNDER THE PROVISIONS OF SECTIONS 50 AND 52 OF THE ACT WHICH IT IS ALLEGED IN THE COMPLAINT HAVE BEEN VIOLATED BY THE RESPONDENT.

4. A COPY OF THIS LETTER WAS FORWARDED TO THE SOLICITORS FOR THE COMPLAINANT FOR COMMENT AND THEY HAVE REPLIED THERETO SETTING OUT WITH MORE PARTICULARITY THE SECTIONS OF THE ACT ON WHICH THEY RELY. THIS LETTER IN TURN WAS FORWARDED TO THE SOLICITOR FOR THE RESPONDENT FOR COMMENT AND HE HAS REPLIED THERETO. THIS LAST LETTER WAS IN TURN FORWARDED TO THE SOLICITORS FOR THE COMPLAINANT, WHO HAVE IN TURN ASKED THE BOARD TO PROCEED WITH THE PROCESSING OF THE COMPLAINT.

5. THE BOARD HAS GIVEN CAREFUL CONSIDERATION TO THE REPRESENTATIONS OF THE PARTIES. THE SOLICITOR FOR THE RESPONDENT APPEARS TO BE UNDER A MISAPPREHENSION AS TO THE NATURE OF THE FUNCTION OF THE FIELD OFFICER. HIS PRIMARY TASK, AS SET OUT IN SECTION 65 AND IN PRACTICE NOTE #1, O.L.R.B. MONTHLY REPORT, JUNE 1961, P. 2, IS TO ATTEMPT TO EFFECT A SETTLEMENT OF THE MATTER IN DISPUTE. ALTHOUGH HE

MAY ASK A RESPONDENT FOR A STATEMENT OF HIS POSITION, THE RESPONDENT IS UNDER NO OBLIGATION AT THAT TIME TO MAKE ANY SUCH STATEMENT, NOR IS HE CALLED ON TO MAKE A FORMAL REPLY. THE BOARD'S RULES (SEE SECTION 30(3)) ENVISAGE THAT A REPLY SHALL BE FILED BY A RESPONDENT ONLY AFTER HE HAS BEEN SERVED WITH A NOTICE OF HEARING. SUCH NOTICE WOULD NOT BE ISSUED UNTIL THE BOARD HAD DECIDED THAT IT OUGHT TO INQUIRE INTO THE COMPLAINT. (SEE SECTION 65(4) OF THE LABOUR RELATIONS ACT.)

6. FORM 32, COMPLAINT UNDER SECTION 65 OF THE ACT OF UNFAIR PRACTICE IN EMPLOYMENT, REQUIRES THE COMPLAINANT TO NAME THE SECTIONS OF THE ACT WHICH IT IS ALLEGED THE RESPONDENT HAS ACTED CONTRARY TO. THE COMPLAINT IN THIS CASE SPECIFIES TWO SECTIONS, NAMELY, SECTIONS 50 AND 52. THE COMPLAINT IN PARAGRAPH 3 ALSO REQUIRES THE COMPLAINANT TO GIVE A CONCISE STATEMENT OF THE NATURE OF EACH ACT OR OMISSION COMPLAINED OF. THE COMPLAINT AS FILED DOES THIS. IN OUR VIEW, THIS IS ALL THAT IS REQUIRED TO GIVE THE BOARD AUTHORITY TO APPOINT A FIELD OFFICER UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. AS NOTED ABOVE, THE PRIMARY PURPOSE OF THE FIELD OFFICER IS TO ATTEMPT TO EFFECT A SETTLEMENT. IF THE RESPONDENT FELT THAT IT WAS UNABLE TO DISCUSS A SETTLEMENT BECAUSE IT COULD NOT UNDERSTAND THE COMPLAINT, THEN IT WAS OPEN TO IT TO REQUEST FURTHER PARTICULARS OR CLARIFICATION OF THE COMPLAINT. IT DID NOT DO SO. AGAIN, AS NOTED ABOVE, THE RESPONDENT IS NOT CALLED UPON AT THIS STAGE OF THE PROCEEDINGS TO FILE A REPLY. AGAIN, IF THE MATTER IS LISTED FOR HEARING AND THE RESPONDENT IS OF THE OPINION THAT IT IS IN NO POSITION TO FILE A REPLY WITHOUT FURTHER PARTICULARS OR CLARIFICATION, IT IS OPEN TO IT TO REQUEST SUCH PARTICULARS OR CLARIFICATION UNDER THE BOARD'S RULES OF PROCEDURE. WE ARE NOT HERE DEALING WITH A PROSECUTION OR A CRIMINAL MATTER BUT, INSTEAD, WITH A REQUEST FOR REINSTATEMENT TOGETHER WITH COMPENSATION. THIS TYPE OF PROCEEDING, AS THE BOARD HAS NOTED IN OTHER CASES, IS A CIVIL RATHER THAN A CRIMINAL PROCEEDING.

7. HAVING REGARD TO THE ABOVE CONSIDERATIONS AND TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO VARY OR REVOKE ITS DECISION IN THIS MATTER DATED MARCH 12, 1968, APPOINTING MR. H. K. MCKAY A FIELD OFFICER TO INQUIRE INTO THE COMPLAINT.

8. ON CONSIDERING THE STATEMENTS OBTAINED BY THE FIELD OFFICER, MR. H. K. MCKAY, IN THE COURSE OF HIS INQUIRY INTO THE COMPLAINT IN THIS MATTER, WE ARE OF THE OPINION THAT THE BOARD SHOULD INQUIRE INTO THE COMPLAINT WITH RESPECT TO LAURENCE RAWN, GERALD MARKEL, ROMEO MEUNIER, JAMES BROADBENT AND GERALD ORR BY MEANS OF A HEARING BY THE BOARD.

9. THE APPROPRIATE NOTICES OF HEARING WILL ISSUE.

14457-68-U: JAMES SPEIRS (COMPLAINANT) v. EDMUND BOYER (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND A. MAIN.

DECISION OF THE BOARD: APRIL 25, 1968.

1. THIS IS A COMPLAINT FILED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE NAMED RESPONDENT EDMUND BOYER DEALT WITH THE COMPLAINANT CONTRARY TO THE PROVISIONS OF SECTION 49 OF THE LABOUR RELATIONS ACT. MORE PARTICULARLY, THE COMPLAINANT ALLEGES THAT EDMUND BOYER, THE EMPLOYEE REPRESENTATIVE ON THE DIVISION OF THE BOARD THAT DEALT WITH A PREVIOUS COMPLAINT MADE BY THE SAME COMPLAINANT (BOARD FILE NO. 13902-67-U), DURING A HEARING OF THAT COMPLAINT ON FEBRUARY 29TH, 1968, SUPPORTED AN EMPLOYERS' ORGANIZATION IN THAT HE DID CAUSE THE COMPLAINT TO BE DISMISSED.

2. IN THE EARLIER COMPLAINT MADE UNDER SECTION 65 OF THE ACT (BOARD FILE NO. 13902-67-U), THE COMPLAINANT ALLEGED THAT THE NAMED RESPONDENTS, BY THEIR CONDUCT WHEN SERVING ON A COMMITTEE KNOWN AS THE GENERAL ADVISORY COMMITTEE ON INDUSTRIAL TRADES, PARTICIPATED IN OR INTERFERED WITH "THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION" WITHIN THE MEANING OF SECTION 48 OF THE ACT.

3. THIS COMPLAINT WAS DEALT WITH BY A DIVISION OF THE BOARD COMPOSED OF G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE. ON NOVEMBER 23RD, 1967, THE BOARD DISMISSED THE COMPLAINT PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THAT IS, ON THE GROUNDS THAT THE COMPLAINANT DID NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED. THE COMPLAINANT HAVING REQUESTED THE BOARD TO REVIEW ITS DECISION, THE BOARD ON DECEMBER 11TH, 1967 CONFIRMED ITS EARLIER DECISION. AS A RESULT OF CERTAIN STATEMENTS CONTAINED IN A LETTER FROM THE COMPLAINANT DATED JANUARY 29TH, 1968, THE BOARD, BY A DECISION DATED FEBRUARY 7TH, 1968, DIRECTED THE REGISTRAR TO LIST THE MATTER FOR CONTINUATION OF HEARING IN ORDER TO ENABLE THE COMPLAINANT TO SHOW CAUSE WHY THE BOARD SHOULD RECONSIDER ITS EARLIER DECISIONS. AT THE BOARD HEARING ON FEBRUARY 29TH, 1968, THE COMPLAINANT WAS GIVEN FULL OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO HIS COMPLAINT. BY A DECISION OF THE BOARD DATED MARCH 12TH, 1968, THE BOARD FOUND THAT THE WORDING OF SECTION 48 COULD NOT BEAR THE MEANING WHICH THE COMPLAINANT SOUGHT TO GIVE THEM AND CONFIRMED ITS ORIGINAL DECISION OF NOVEMBER 23RD, 1967, DISMISSING THE COMPLAINT. BY A DECISION DATED MARCH 25TH, 1968, THE BOARD DENIED A REQUEST OF THE COMPLAINANT FOR A FURTHER RECONSIDERATION OF THE COMPLAINT.

4. CONSIDERING NOW THE INSTANT COMPLAINT, THE GENERAL ADVISORY COMMITTEE ON INDUSTRIAL TRADES, CLEARLY IS NOT AN EMPLOYERS' ORGANIZATION WITHIN THE MEANING OF SECTION 49 OF THE LABOUR RELATIONS ACT.

THIS BEING THE CASE, THERE IS NO FOUNDATION FOR THE ALLEGATION MADE BY THE COMPLAINANT THAT THE RESPONDENT EDMUND BOYER SUPPORTED AN EMPLOYERS' ORGANIZATION IN CONTRAVENTION OF SECTION 49 OF THE ACT. FOR THIS REASON, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT MADE OUT A PRIMA FACIE CASE IN SUPPORT OF HIS COMPLAINT. WE WOULD ADD THAT OTHER ALLEGATIONS MADE BY THE COMPLAINANT ARE NOT MATTERS THAT CAN BE DEALT WITH BY THE BOARD IN THIS COMPLAINT.

5. ACCORDINGLY, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS DISMISSED.

INDEXED ENDORSEMENT - SECTION 33(2)

14402-68-M: LIVINGSTON INDUSTRIES LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: APRIL 25, 1968.

1. THIS IS AN APPLICATION UNDER SECTION 33(2) OF THE LABOUR RELATIONS ACT TO HAVE A "NO STRIKE - NO LOCK-OUT" CLAUSE ADDED TO THE COLLECTIVE AGREEMENT PRESENTLY IN OPERATION BETWEEN THE PARTIES. THE AGREEMENT IN QUESTION BECAME EFFECTIVE ON MAY 15, 1966 AND REMAINS IN EFFECT UNTIL MAY 14, 1968.

2. SECTION 33 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

(33).-(1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE THAT THERE WILL BE NO STRIKES OR LOCK-OUTS SO LONG AS THE AGREEMENT CONTINUES TO OPERATE.

(2) IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION 1, IT MAY BE ADDED TO THE AGREEMENT AT ANY TIME BY THE BOARD UPON THE APPLICATION OF EITHER PARTY.

3. IT IS CLEAR THAT THE AGREEMENT BETWEEN THE PARTIES, A COPY OF WHICH WAS FILED WITH THE APPLICATION, DOES NOT CONTAIN THE CLAUSE ENVISAGED BY SUBSECTION 1 OF SECTION 33. ALTHOUGH THE RESPONDENT TRADE UNION WAS SERVED WITH NOTICE OF THE APPLICATION AND INVITED TO MAKE COMMENTS WITH RESPECT THERETO ON OR BEFORE APRIL 9, 1968, IT HAS FAILED TO FILE WITH THE BOARD ANY WRITTEN REPRESENTATIONS.

4. THE AGREEMENT IN QUESTION ENTERED INTO ON MAY 15, 1966 IS BETWEEN LIVINGSTON WOOD MANUFACTURING LIMITED AND INTERNATIONAL WOODWORKERS OF AMERICA. THE BOARD IS SATISFIED THAT LIVINGSTON WOOD MANUFACTURING LIMITED IS THE SAME ENTITY AS THE APPLICANT IN THIS PROCEEDING, A CHANGE IN NAME ONLY HAVING TAKEN PLACE ON APRIL 17TH, 1967.

5. THE BOARD ISSATISFIED THAT THE APPLICANT IS ENTITLED TO THE RELIEF SOUGHT. THE FOLLOWING PROVISION IS THEREFORE ADDED TO THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES EFFECTIVE FORTHWITH:

THERE SHALL BE NO STRIKES OR LOCK-OUTS
SO LONG AS THIS AGREEMENT CONTINUES TO
OPERATE.

INDEXED ENDORSEMENTS - SECTION 79(2)

13594-67-M: TOBACCO WORKERS' INTERNATIONAL UNION (APPLICANT) V.
ROTHMANS OF PALL MALL CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER
AND R. W. TEAGLE.

DECISION OF THE BOARD: APRIL 3, 1968.

1. THE PARTIES IN THIS MATTER ARE CURRENTLY INVOLVED IN AN INQUIRY, CONDUCTED BY THE BOARD'S EXAMINER, INTO THE DUTIES AND RESPONSIBILITIES OF J. FAULKNER. THE BOARD IN ITS DECISION OF NOVEMBER 2ND, 1967 STATED, IN PART, AS FOLLOWS:

DURING THE COURSE OF MR. FAULKNER'S EXAMINATION
THE PARTIES WILL HAVE AN OPPORTUNITY TO PUT
QUESTIONS TO MR. FAULKNER WHEREIN A COMPARISON
CAN BE MADE OF THE DUTIES PERFORMED BY HIM AND
THE DUTIES PREVIOUSLY PERFORMED BY MR. RICHARDSON.

2. IT IS ALLEGED THAT MR. FAULKNER PERFORMS SIMILAR FUNCTIONS TO THOSE PERFORMED BY MR. RICHARDSON. THE BOARD MADE A DETERMINATION WITH RESPECT TO MR. RICHARDSON'S DUTIES AND RESPONSIBILITIES IN ITS DECISION IN BOARD FILE NO. 7640-63-M. APPARENTLY, MR. McEACHRAN, ANOTHER EMPLOYEE, PERFORMED FUNCTIONS SIMILAR TO THOSE NOW PERFORMED BY MR. FAULKNER BETWEEN THE TIME THAT MR. RICHARDSON CEASED TO PERFORM SUCH DUTIES AND RESPONSIBILITIES AND THE TIME OF MR. FAULKNER'S APPOINTMENT TO HIS PRESENT POSITION.

3. AT THE EXAMINER'S HEARING, THE RESPONDENT'S SOLICITOR, DURING HIS CROSS-EXAMINATION OF A WITNESS CALLED BY THE APPLICANT, ASKED THE FOLLOWING QUESTION: "DO I UNDERSTAND YOU THAT MR. McEACHRAN HAD THE SAME JOB FOR 3 MONTHS WITH THE SAME DUTIES AND RESPONSIBILITIES AS FAULKNER HAS NOW?"

4. OBJECTION WAS TAKEN TO THE QUESTION POSED BY THE SOLICITOR FOR THE RESPONDENT AND THE MATTER HAS BEEN REFERRED TO THE BOARD FOR A RULING.

5. ON THE UNDERSTANDING THAT THE RESPONDENT'S SOLICITOR INTENDS TO TIE IN THE ANSWER TO THE DISPUTED QUESTION WITH THE DUTIES AND RESPONSIBILITIES OF MR. FAULKNER AND THE MANNER IN WHICH SUCH DUTIES AND RESPONSIBILITIES COMPARE WITH THE DUTIES AND RESPONSIBILITIES OF MR. RICHARDSON AS OF THE DATE OF MR. RICHARDSON'S EXAMINATION IN BOARD FILE No. 7640-63-M, THE BOARD RULES THAT THE QUESTION IS A PROPER QUESTION IN CROSS-EXAMINATION. ANY WITNESS CALLED BY THE PARTIES MAY BE EXAMINED CONCERNING THE MANNER IN WHICH MR. FAULKNER'S DUTIES COMPARE WITH THE DUTIES FORMERLY PERFORMED BY MR. RICHARDSON AT THE TIME HE WAS EXAMINED IN THE EARLIER CASE. IN ADDITION, EITHER PARTY MAY CALL ANY PERSON WHO HAS KNOWLEDGE OF THESE FACTS TO TESTIFY CONCERNING THE MATTER IN DISPUTE.

13997-67-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. STEEP ROCK IRON MINES LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: LORNE INGLE FOR THE APPLICANT, S. E. DINSDALE, Q.C., J. A. CAMPBELL AND G. K. EOLL FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER F. W. MURRAY: APRIL 24, 1968.

1. THE APPLICANT HAS APPLIED, PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT, FOR A DETERMINATION BY THE BOARD WITH RESPECT TO PERSONS CLASSIFIED BY THE RESPONDENT AS TECHNICAL CONTROL ROOM SUPERVISORS.

2. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED FEBRUARY 21ST, 1968, AS AMENDED BY HIS SUPPLEMENTARY REPORT DATED MARCH 5TH, 1968, A HEARING WAS HELD BY THE BOARD TO HEAR THE REPRESENTATIONS OF THE PARTIES CONCERNING WHAT EFFECT SHOULD BE GIVEN TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER.

3. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT PERSONS CLASSIFIED BY THE RESPONDENT AS TECHNICAL CONTROL ROOM SUPERVISORS GIVE DIRECTION TO EMPLOYEES WHO ARE INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE APPLICANT AND HAVE AUTHORITY TO INITIATE PROCEDURE WHICH COULD LEAD TO SUCH PERSONS BEING DISCIPLINED OR DISCHARGED. THE PERSONS IN DISPUTE GIVE ORDERS AND DIRECTION TO EMPLOYEES IN THE BARGAINING UNIT AND AS A

REGULAR PART OF THEIR FUNCTIONS THEY ARE REQUIRED TO INITIATE ACTION WHICH IS TAKEN BY THE FOREMAN. THE TECHNICAL CONTROL ROOM SUPERVISORS ATTEND MEETINGS OF MANAGEMENT AT WHICH MATTERS CONCERNING MANAGEMENT ARE DISCUSSED INCLUDING MATTERS RELATING TO LABOUR RELATIONS. THE TECHNICAL CONTROL ROOM SUPERVISORS HAVE BEEN TRAINED IN THE ART OF MANAGEMENT BY THE COMPANY AND HAVE BEEN GIVEN SPECIAL COURSES IN THIS RESPECT. THEY HAVE THE AUTHORITY, WHICH THEY REGULARLY EXERCISE, TO SHUT DOWN THE OPERATIONS AT THE PLANT WHEN THE OCCASION WARRANTS AND THIS POWER IS EXERCISED ON THEIR OWN AUTHORITY WITHOUT CONSULTATION WITH OTHER MEMBERS OF MANAGEMENT. BECAUSE OF THEIR FUNCTIONS IN THE RESPONDENT'S HIGHLY AUTOMATED PLANT, IT APPEARS THAT THE TECHNICAL CONTROL ROOM SUPERVISORS ACT AS THE FOREMAN'S ALTER EGO, AND RATHER THAN SIMPLY ACTING AS A CONDUIT OF INFORMATION FOR THE FOREMAN, THEY, IN FACT, INITIATE THE FOREMAN'S ACTIONS BY ADVISING WHAT ACTION SHOULD BE TAKEN IN MANY INSTANCES. THEY ALSO ASSESS THE ABILITY OF NEW EMPLOYEES TO PERFORM THEIR JOBS AND SUCH ASSESSMENT BECOMES PART OF THE EMPLOYEES' EMPLOYMENT RECORD.

4. HAVING REGARD TO THE FACTORS OUTLINED ABOVE, THE BOARD FINDS THAT FRED G. COX, W. T. GOODWIN, I. C. PEARCE AND L. STUBER, PERSONS CLASSIFIED BY THE RESPONDENT AS TECHNICAL CONTROL ROOM SUPERVISORS, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE ACT.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: APRIL 24, 1968.

HAVING REVIEWED THE EVIDENCE IN THE REPORT OF THE EXAMINER AND THE SUBSEQUENT REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, I FIND THAT THE TECHNICAL CONTROL SUPERVISORS DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT.

THE REPORT OF THE EXAMINER CERTAINLY ESTABLISHES THAT THE TECHNICAL CONTROL SUPERVISORS HAVE GREAT RESPONSIBILITY WITH REGARD TO THE EFFICIENT RUNNING OF THE PLANT BECAUSE THEY ARE BASICALLY DIAL WATCHERS AND TROUBLE SHOOTERS IN A HIGHLY COMPLEX AND SOPHISTICATED AUTOMATED CONTROL ROOM.

THESE PEOPLE WHILE ADMITTEDLY HIGHLY TECHNICAL AND HAVING WIDE TECHNICAL POWERS IN TERMS OF THE EFFICIENT OPERATION OF THE PLANT IN QUESTION, NEVERTHELESS ARE FAR FROM BEING MANAGERIAL PERSONS UNDER SECTION 1(3)(B) OF THE ONTARIO LABOUR RELATIONS ACT.

THE LARGE QUESTIONS OF AUTOMATION AND ITS SIDE EFFECTS ARE INVOLVED IN THE INSTANT CASE, SO I VIEW THE DECISION OF THE MAJORITY WITH SOME ALARM FOR THE FUTURE OF COLLECTIVE BARGAINING IN OUR AUTOMATED AGE.

IN THIS CASE THE TECHNICAL CONTROL SUPERVISORS ARE ISOLATED IN A CONTROL ROOM FROM THEIR FELLOW WORKERS AND GENERALLY THEIR CONTACT WITH OTHERS IS TO RELATE TO THEM, BY PHONE, THE INFORMATION ON THE PROPER FUNCTIONING OF THE PLANT AS THEY DETERMINE FROM THEIR READING OF THE VARIOUS DIALS BEFORE THEM.

THE REAL FUNCTIONS OF THESE PEOPLE CAN BE SEEN IN THE FOLLOWING EXTRACT FROM THE EVIDENCE OF ONE OF THEM CONTAINED IN THE EXAMINER'S REPORT:

"THE WITNESS VISUALLY CHECKS THE CONTROL BOARD, THE CONTROLS AND THE CHARTS TO SEE THAT EVERYTHING IS RUNNING SMOOTHLY AND THAT THERE ARE NO PROBLEMS. WHEN HIS CONTROLS TELL HIM THAT SOMETHING HAS GONE WRONG, HE WILL CALL THE PERSON WHOM IT CONCERNS AND ASK HIM TO FIND OUT WHAT IS WRONG. FOR INSTANCE, IF THE FLAME GOES OUT IN THE DRIER, THE ANNONCIATEUR ON THE CONTROL BOARD TELLS HIM AND HE CALLS THE DRIER ATTENDANT TO RE-LIGHT THE FLAME, IF THE BELTS KICK OFF HE WOULD SEND SOMEONE TO FIND THE REASON. HE SAID THAT THE MOTORS AND CONTROLLERS KICK OFF QUITE FREQUENTLY, AND WHEN THIS HAPPENS HE WOULD CALL AN ELECTRICIAN TO HAVE THEM RE-SET WHICH MAY HAPPEN THREE OR FOUR TIMES DURING A SHIFT. HE SAID THAT IF A PILE UP OCCURRED ON THE BELTS, HE WOULD CALL THE FOREMAN AND TELL HIM WHAT HAPPENED. THE FOREMAN WOULD THEN PROCEED TO HAVE IT LOOKED AFTER. HE STATED THAT THE SHOOT WELL WOULD PLUG UP AND SPILL OVER, SO HE TELEPHONES THE FOREMAN AND TELLS HIM WHAT HE THINKS HAS HAPPENED. THE FOREMAN GETS THINGS MOVING AGAIN. THE WITNESS SAID HE DOES NOT DO ANY REPAIRS AS HE NEVER LEAVES THE CONTROL ROOM.

THE WITNESS SAID THAT HE ALSO USES THE RADIO WHEN HIS CONTROL BOARD TELLS HIM THAT THERE ARE PROBLEMS. FOR EXAMPLE, HE DIRECTS FRONT END LOADERS, AND SOMETIMES WHEN THE LOADING CARS GO BY THE LOADING POINT HE CALLS BY RADIO TO HAVE SOMEONE PUSH THE CARS BACK."

I SUBMIT THAT THESE HIGHLY TECHNICAL PEOPLE NEED COLLECTIVE BARGAINING JUST AS MUCH AS OTHER EMPLOYEES IN THE PLANT, THE RESULT OF THE DECISION OF THE MAJORITY IN THE INSTANT CASE IS TO DENY COLLECTIVE BARGAINING TO THEM BECAUSE OF A VERY OUTMODDED INTERPRETATION OF MANAGERIAL FUNCTIONS IN AN AUTOMATED AGE. WE HAVE TO MOVE WITH THE TIMES AND I WOULD MOVE INTO OUR AUTOMATED AGE AND MAKE MY DECISION ACCORDINGLY.

I WOULD USE YOUR DISCRETIONARY POWER AND VIEW MANAGERIAL FUNCTIONS AS PROVIDED FOR IN SECTION 1(3)(B) OF THE ONTARIO LABOUR RELATIONS ACT AS BEING WIDE ENOUGH TO INCLUDE THESE PEOPLE IN THE BARGAINING UNIT AND WOULD THEREBY ALLOW THESE WORKERS IN THE NEW AUTOMATED AGE CLASSIFICATIONS THE RIGHT TO BARGAIN COLLECTIVELY.

IN THE END RESULT I FIND THAT THE PERSONS CLASSIFIED AS TECHNICAL CONTROL SUPERVISORS ARE EMPLOYEES FOR THE PURPOSES OF THE ONTARIO LABOUR RELATIONS ACT.

INDEXED ENDORSEMENTS - SECTION 79A

14135-67-M: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO (TRADE UNION) V. CANADIAN WESTINGHOUSE CO. LTD. (EMPLOYER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND W. STEFANOVITCH FOR THE TRADE UNION, B. H. STEWART AND W. HOWARD FENWICK FOR THE EMPLOYER.

DECISION OF THE BOARD: APRIL 4, 1968.

1. THE MINISTER HAS REFERRED TO THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 79A OF THE LABOUR RELATIONS ACT, THE QUESTION AS TO WHETHER THERE IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE TRADE UNION AND THE EMPLOYER.
2. THE DOCUMENT UPON WHICH THE TRADE UNION RELIED IS A SHORT FORM AGREEMENT SIGNED JUNE 10TH, 1963, WHICH PURPORTS TO INCORPORATE BY REFERENCE ALL THE PROVISIONS OF THE COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE TRADE UNION AND THE ASSOCIATION OF MILLWRIGHTING AND RIGGING CONTRACTORS OF ONTARIO.
3. FOR THE PURPOSE OF DEALING WITH THE VALIDITY AND TERM OF THE AGREEMENT UPON WHICH THE TRADE UNION RELIED, WE HAVE ASSUMED THAT THE AGREEMENT BETWEEN THE TRADE UNION AND THE EMPLOYER WAS SIGNED BY THE PROPER OFFICERS OF EACH OF THE PARTIES, WHICH FACT IS DISPUTED BY THE EMPLOYER.
4. THE SHORT FORM OF AGREEMENT SIGNED ON BEHALF OF EACH OF THE PARTIES READS AS FOLLOWS:

AGREEMENT ENTERED INTO THIS 10TH DAY OF JUNE 1963

BETWEEN

THE FIRM OF CANADIAN WESTINGHOUSE CO. LTD HEREINAFTER
REFERRED TO AS THE "CONTRACTOR."

P.O. Box 53, SAULT STE. MARIE, ONTARIO.

AND

THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA, ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT
COUNCILS IN THE PROVINCE OF ONTARIO, HEREINAFTER
REFERRED TO AS THE "UNION."

WHEREAS: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO, AND THE ASSOCIATION OF MILLWRIGHTING AND RIGGING CONTRACTORS OF ONTARIO, NEGOTIATE AND ESTABLISH BY AGREEMENT CERTAIN TERMS AND CONDITIONS OF EMPLOYMENT FOR THE MILLWRIGHTING TRADE, AND

WHEREAS: THE PARTIES HERETO DESIRE TO PROMOTE AND MAINTAIN HARMONIOUS RELATIONS BETWEEN THE EMPLOYER AND EMPLOYEES:

WITNESSETH: THAT THE PARTIES HERETO ACCEPT AND AGREE EACH WITH THE OTHER TO BE BOUND BY ALL TERMS AND CONDITIONS CONTAINED IN THE CURRENT AGREEMENT BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO, AND THE ASSOCIATION OF MILLWRIGHTING AND RIGGING CONTRACTORS OF ONTARIO, AND AS IT MAY BE CHANGED OR RENEWED FROM TIME TO TIME BY NEGOTIATIONS AND/OR BY LAPSE OF TIME, TO THE SAME EXTENT AS THOUGH THE CONTRACTOR HAS EXECUTED SUCH AGREEMENT AS A MEMBER OF THE ASSOCIATION OF MILLWRIGHTING AND RIGGING CONTRACTORS OF ONTARIO, AND SUCH CONDITIONS ARE HEREBY MADE PART OF THIS AGREEMENT, AND EFFECTIVE ON ALL PROJECTS OF THE CONTRACTOR.

SIGNED ON BEHALF OF THE CONTRACTOR

SIGNED ON BEHALF OF THE UNION

5. ON JUNE 10TH, 1963, THE DATE THE SHORT FORM OF AGREEMENT WAS SIGNED, THE UNION WAS A PARTY TO A COLLECTIVE AGREEMENT WITH THE ASSOCIATION OF MILLWRIGHTING AND RIGGING CONTRACTORS OF ONTARIO WHICH CONTAINED THE FOLLOWING DURATION AND RENEWAL CLAUSE:

ARTICLE EIGHTEEN

DURATION AND RENEWAL

(A) THIS AGREEMENT SHALL BECOME EFFECTIVE WHEN SIGNED BY THE AUTHORIZED REPRESENTATIVES OF THE PARTIES HERETO, AND SHALL BE OPERATIVE FROM THE 1ST OF JUNE, 1961, TO AND INCLUDING THE 31ST DAY OF MAY, 1963.

(B) IT IS AGREED THAT THIS AGREEMENT SHALL CONTINUE IN FORCE FROM YEAR TO YEAR, IF NEITHER PARTY NOTIFIES THE OTHER PARTY OF ITS INTENTION TO AMEND, MODIFY, CHANGE, OR TERMINATE THIS AGREEMENT.

(c) IF, HOWEVER, EITHER PARTY DESIRES TO AMEND, MODIFY, CHANGE OR TERMINATE THIS AGREEMENT, IT SHALL NOTIFY THE OTHER PARTY IN WRITING OF ITS DESIRE WITHIN NINETY (90) DAYS PRIOR TO THE TERMINATION DATE OF THIS AGREEMENT.

6. SINCE THAT AGREEMENT HAD EXPIRED, THE PARTIES TO THE AGREEMENT WERE IN THE PROCESS OF BARGAINING FOR THE RENEWAL OF THE AGREEMENT AT THE TIME THE TRADE UNION AND THE EMPLOYER IN THE INSTANT CASE SIGNED THE SHORT FORM AGREEMENT. SUBSEQUENTLY, ON THE 5TH DAY OF SEPTEMBER, 1963, THE UNION AND THE ASSOCIATION OF MILLWRIGHTING AND RIGGING CONTRACTORS OF ONTARIO SIGNED A RENEWAL OF THEIR COLLECTIVE AGREEMENT WHICH WAS MADE RETROACTIVE TO THE 1ST DAY OF JUNE, 1963.

7. THE QUESTION BEFORE THE BOARD IS WHETHER THE LAST CLAUSE OF THE SHORT FORM AGREEMENT QUOTED ABOVE BINDS THE EMPLOYER AND THE TRADE UNION TO THE COLLECTIVE AGREEMENT WHICH WE WILL ASSUME WAS IN EXISTENCE ON JUNE 10TH, 1963, AND ALL SUBSEQUENT AGREEMENTS ENTERED INTO BETWEEN THE UNION AND THE ASSOCIATION "TO THE SAME EXTENT AS THOUGH THE CONTRACTOR HAS EXECUTED SUCH AGREEMENT AS A MEMBER OF THE ASSOCIATION".

8. SECTION 39(1) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

IF A COLLECTIVE AGREEMENT DOES NOT PROVIDE FOR ITS TERM OF OPERATION OR PROVIDES FOR ITS OPERATION FOR AN UNSPECIFIED TERM OR FOR A TERM OF LESS THAN ONE YEAR, IT SHALL BE DEEMED TO PROVIDE FOR ITS OPERATION FOR A TERM OF ONE YEAR FROM THE DATE THAT IT COMMENCED TO OPERATE.

9. ASSUMING THERE WAS AN AGREEMENT IN OPERATION AT THE TIME THE SHORT FORM AGREEMENT WAS SIGNED, IF THE ARGUMENT OF THE TRADE UNION IS TO BE GIVEN WEIGHT, THEN THE BOARD WOULD HAVE TO FIND THAT THE TRADE UNION AND THE EMPLOYER WOULD BE BOUND BY ALL THE PROVISIONS OF THE COLLECTIVE AGREEMENT BETWEEN THE TRADE UNION AND THE ASSOCIATION OF MILLWRIGHTING AND RIGGING CONTRACTORS OF ONTARIO WHICH WAS THEN IN EFFECT, "AND AS IT MAY BE CHANGED OR RENEWED FROM TIME TO TIME BY NEGOTIATIONS AND/OR BY LAPSE OF TIME, TO THE SAME EXTENT AS THOUGH THE CONTRACTOR HAS EXECUTED SUCH AGREEMENT AS A MEMBER OF THE ASSOCIATION". SUCH AGREEMENT WOULD BE AN AGREEMENT IN PERPETUITY SO LONG AS THE ASSOCIATION AND THE UNION CONTINUED TO BE BOUND BY THE MASTER COLLECTIVE AGREEMENT AS RENEWED FROM TIME TO TIME. SUCH AN AGREEMENT WOULD BE AN AGREEMENT FOR AN "UNSPECIFIED TERM" WITHIN THE MEANING OF SECTION 39(1). IF THEREFORE FOLLOWS THAT IF THE TRADE UNION WAS SUCCESSFUL IN ITS ARGUMENT, IT ONLY SUCCEEDS IN ESTABLISHING THAT THE TERM OF OPERATION OF ANY SIMILAR SHORT FORM AGREEMENT ENTERED INTO BETWEEN THE TRADE UNION AND A CONTRACTOR IS FOR AN UNSPECIFIED TERM WHICH WOULD REQUIRE THE BOARD TO APPLY THE PROVISIONS OF SECTION 39(1) OF THE ACT AND DEEM THE TERM OF OPERATION OF SUCH SHORT FORM AGREEMENT TO BE FOR A PERIOD OF ONE YEAR.

10. IN ORDER TO DETERMINE THE TERM OF OPERATION OF ANY COLLECTIVE AGREEMENT THE WHOLE OF THE DURATION CLAUSE MUST BE CONSIDERED. IF, UPON READING THE DURATION CLAUSE OF THE COLLECTIVE AGREEMENT, IT IS DETERMINED THAT THE DURATION CLAUSE, WHEN READ AS A WHOLE, PROVIDES FOR AN UNSPECIFIED TERM, THEN THE BOARD MUST APPLY THE PROVISIONS OF SECTION 39(1) OF THE ACT AND DEEM THE TERM OF OPERATION OF THE COLLECTIVE AGREEMENT TO BE FOR A PERIOD OF ONE YEAR. WHEN THE PROVISIONS OF SECTION 39(1) ARE APPLIED, THEY MUST BE APPLIED BY WAY OF SUBSTITUTION FOR ANY DURATION CLAUSE CONTAINED IN THE COLLECTIVE AGREEMENT. IT WOULD BE IMPROPER FOR THE BOARD TO IGNORE PART OF A DURATION CLAUSE THAT THE PARTIES HAVE AGREED TO BECAUSE THE TERM IS UNSPECIFIED AND AT THE SAME TIME APPLY PART OF SUCH DURATION CLAUSE SO THAT THE INTENT OF SECTION 39(1) IS THEREBY NULLIFIED.

11. IT IS NOT THE BOARD'S INTENTION TO SUGGEST BY THIS DECISION THAT ALL SHORT FORM AGREEMENTS WHICH PURPORT TO INCORPORATE BY REFERENCE THE TERMS OF MASTER AGREEMENTS BETWEEN OTHER PARTIES ARE DEFECTIVE. IF THE SHORT FORM AGREEMENT WHICH IS SIGNED PROVIDES ON ITS FACE FOR A SPECIFIED TERM OF OPERATION (WHICH MAY INCLUDE THE USUAL PROVISION THAT IT BE RENEWED FROM YEAR TO YEAR IN THE ABSENCE OF NOTICE OF DESIRE TO TERMINATE OR BARGAIN FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT) THEN THE AGREEMENT IS FOR A TERM CERTAIN AND SECTION 39(1) DOES NOT APPLY. HOWEVER, WHERE THE SHORT FORM AGREEMENT DOES NOT PROVIDE ON ITS FACE FOR A SPECIFIED TERM OF OPERATION BUT PURPORTS TO ADOPT THE TERM OF OPERATION OF A COLLECTIVE AGREEMENT BETWEEN OTHER PARTIES, AS IT MAY BE CHANGED FROM TIME TO TIME, THEN IT CAN BE SAID THAT THE SHORT FORM AGREEMENT IS FOR AN UNSPECIFIED TERM.

12. THE PARTIES TO THE MASTER COLLECTIVE AGREEMENT MAY APPLY FOR EARLY TERMINATION OF THE AGREEMENT UNDER SECTION 39(3) OF THE ACT AND THE BOARD, FOLLOWING NOTICE TO THE EMPLOYEES SPECIFICALLY COVERED BY THE COLLECTIVE AGREEMENT MAY GRANT EARLY TERMINATION OF THAT COLLECTIVE AGREEMENT THEREBY PERMITTING THE PARTIES TO NEGOTIATE A NEW COLLECTIVE AGREEMENT FOR AN EXTENDED TERM. IF THE DURATION CLAUSE OF THE NEW MASTER AGREEMENT WAS ALSO BINDING UPON THE PARTIES TO THE SHORT FORM AGREEMENT, THE EMPLOYEES COVERED BY THE SHORT FORM AGREEMENT WOULD HAVE A NEW AGREEMENT IMPOSED UPON THEM WITHOUT NOTICE, THEREBY DEPRIVING THEM OF THE OPPORTUNITY OF APPLYING FOR TERMINATION OF THE BARGAINING RIGHTS OF THE UNION OR OF CHANGING BARGAINING AGENTS. ALTHOUGH THE PARTIES MAY AGREE TO BE BOUND BY CHANGES IN CONDITIONS AS NEGOTIATED BY OTHER PARTIES DURING THE TERM OF THEIR COLLECTIVE AGREEMENT, HOWEVER, THE DURATION OF THEIR AGREEMENT MUST REMAIN WITHIN THE CONTROL OF THE PARTIES TO THE AGREEMENT AND BE SPECIFIED ON THE FACE OF THE AGREEMENT IN ORDER TO GIVE EFFECT TO, AND ENSURE THE PROTECTION PROVIDED BY, THE PROVISIONS OF THE LABOUR RELATIONS ACT INCLUDING SECTIONS 5, 39(3), 43, 45 AND 46.

13. SECTION 39 OF THE ACT DOES NOT PROVIDE FOR AUTOMATIC RENEWALS FROM YEAR TO YEAR AND THEREFORE THE TERM OF OPERATION OF THE SHORT FORM OF AGREEMENT ENTERED INTO BY THE PARTIES IN THIS MATTER, WHICH IS DEEMED TO BE FOR A PERIOD OF ONE YEAR, WOULD EXPIRE ON THE 9TH DAY OF JUNE, 1964.

14. IN THIS REGARD, SEE ALSO THE BOARD'S DECISION IN CRESTILE LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 41 AT P. 45. THE BOARD IN THE INSTANT CASE HAS ARRIVED AT ITS DECISION HAVING CONSIDERED THE VIEWS EXPRESSED IN L. BOSS BUILDING AND REMODELLING CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1963, AT P. 414, WHICH VIEWS ARE NOT ADOPTED BY THE BOARD IN THE INSTANT CASE AND WERE NOT ADOPTED BY THE BOARD IN THE CRESTILE CASE REFERRED TO ABOVE.

15. SINCE THE BOARD HAS FOUND THAT THE SHORT FORM OF AGREEMENT ENTERED INTO BETWEEN THE TRADE UNION AND THE EMPLOYER WAS FOR A TERM OF ONE YEAR, WHICH EXPIRED ON JUNE 9TH, 1964, IT THEREFORE FOLLOWS THAT ON FEBRUARY 9TH, 1968, THE DATE THAT THIS MATTER WAS REFERRED TO THE BOARD BY THE MINISTER, THERE WAS NO COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE TRADE UNION AND THE EMPLOYER.

16. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD IS THAT THERE WAS NO COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, ON BEHALF OF ITS LOCAL UNIONS AND DISTRICT COUNCILS IN THE PROVINCE OF ONTARIO AND CANADIAN WESTINGHOUSE CO. LTD., ON FEBRUARY 9TH, 1968.

14250-67-M: INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 183 (TRADE UNION) v. TONY SUPPA CONSTRUCTION (EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: NO ONE FOR THE TRADE UNION, AND
MARVIN BARKEN FOR THE EMPLOYER.

DECISION OF THE BOARD: APRIL 2, 1968.

1. THE MINISTER HAS REFERRED TO THE ONTARIO LABOUR RELATIONS BOARD, PURSUANT TO SECTION 79A OF THE ACT, THE QUESTION AS TO WHETHER OR NOT, IN ALL THE CIRCUMSTANCES, THE MINISTER OF LABOUR HAS THE POWER UNDER THE ACT TO APPOINT A CONCILIATION OFFICER.

2. THE TRADE UNION HEREIN WAS CERTIFIED AS BARGAINING AGENT FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF TONY SUPPA CONSTRUCTION IN METROPOLITAN TORONTO, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT, ON THE 20TH OF JUNE, 1961.

3. THE EVIDENCE HEARD BY THE BOARD INDICATES THAT NO NOTICE TO BARGAIN PURSUANT TO SECTION 11 OF THE LABOUR RELATIONS ACT WAS RECEIVED BY THE EMPLOYER. FURTHERMORE, ACCORDING TO THE EVIDENCE HEARD, THE PARTIES HAVE NEVER MET AND BARGAINED AT ANY TIME, AND THE UNION MUST BE TAKEN TO HAVE ABANDONED ITS BARGAINING RIGHTS.

4. HAVING REGARD, THEREFORE, TO THE FOREGOING EVIDENCE AND THE PROVISIONS OF SECTIONS 11 AND 13 OF THE LABOUR RELATIONS ACT, THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IS "No."

INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

14278(A)-67-JD: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 1687 (COMPLAINANT) V. FALCONBRIDGE NICKEL MINES LIMITED AND SUDBURY MINE, MILL AND SMELTER WORKERS' UNION LOCAL 598 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. KOSKIE AND L. POPOVITCH FOR THE COMPLAINANT, N. MACL. ROGERS, Q.C., FOR THE RESPONDENT COMPANY.

DECISION OF THE BOARD: APRIL 18, 1968.

1. THE COMPLAINANT IS APPLYING TO THE BOARD UNDER SECTION 66 OF THE ACT FOR A DIRECTION CONCERNING A DISPUTE ARISING OUT OF AN ASSIGNMENT OF WORK MADE BY THE RESPONDENT COMPANY.

2. THE RESPONDENT COMPANY SUBMITS THAT THE BOARD HAS NO JURISDICTION TO INQUIRE INTO OR TO MAKE ANY DIRECTION WITH RESPECT TO THE COMPLAINT UNDER THE PROVISIONS OF SECTION 66.

3. FOR PURPOSES OF ARGUMENT WITH RESPECT TO THE JURISDICTION OF THE BOARD, THE PARTIES AGREED TO THE FOLLOWING SET OF FACTS. THE RESPONDENT TRADE UNION AND THE RESPONDENT COMPANY ARE PARTIES TO A COLLECTIVE AGREEMENT. THE RESPONDENT COMPANY HAS ASSIGNED THE WORK IN DISPUTE TO MEMBERS OF THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT. ONE EMPLOYEE OF THE RESPONDENT, HOWEVER, TO WHOM THE WORK HAS BEEN ASSIGNED, ALTHOUGH HE IS A MEMBER OF THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT, IS ALSO A MEMBER OF THE COMPLAINANT TRADE UNION. THE RESPONDENT COMPANY HAS NO COLLECTIVE AGREEMENT WITH THE COMPLAINANT TRADE UNION.

4. IN SUPPORT OF ITS SUBMISSION, COUNSEL FOR THE RESPONDENT COMPANY ARGUES THAT SECTION 66 HAS NO APPLICATION IN THE INSTANT CIRCUMSTANCES SINCE THE RESPONDENT COMPANY DID NOT KNOWINGLY ASSIGN THE WORK IN DISPUTE TO MEMBERS OF ONE TRADE UNION RATHER THAN MEMBERS

OF ANOTHER TRADE UNION. COUNSEL FURTHER ARGUES THAT THE RESPONDENT COMPANY, IN FACT, HAS ASSIGNED THE WORK IN DISPUTE TO THE ONLY ONE OF ITS EMPLOYEES WHO IS A MEMBER OF THE COMPLAINANT UNION AND THAT ACCORDINGLY THERE IS NO BASIS FOR THE COMPLAINT. COUNSEL TAKES THE POSITION THAT IF THE RESPONDENT COMPANY WERE REQUIRED TO ASSIGN THE WORK IN DISPUTE EXCLUSIVELY TO MEMBERS OF THE COMPLAINANT UNION IT WOULD MEAN THAT THE COMPANY WOULD HAVE TO HIRE NEW EMPLOYEES NOT NOW IN ITS EMPLOY, WHEN IT ALREADY HAS IN ITS EMPLOY EMPLOYEES ABLE AND WILLING TO PERFORM THE WORK IN DISPUTE. SUCH A REQUIREMENT, ACCORDING TO COUNSEL, WOULD BE CONTRARY TO THE INTERPRETATION PLACED ON SECTION 66(1) OF THE ACT BY MCRUER, C.J.H.C. IN THE CANADIAN PITTSBURGH INDUSTRIES LIMITED V H. ORLIFFE ET AL. CASE (1961) C.L.L. C. VOL. 2, 1960-1964, ¶15373.

5. COUNSEL FOR THE COMPLAINANT SUBMITS THAT WHETHER OR NOT THE RESPONDENT COMPANY "KNOWINGLY" ASSIGNED THE WORK TO MEMBERS OF ONE TRADE UNION RATHER THAN TO MEMBERS OF ANOTHER TRADE UNION HAS NO RELEVANCE UNDER THE PROVISIONS OF SECTION 66. COUNSEL ASSERTS THAT THE WORK IN DISPUTE FALLS WITHIN THE JURISDICTION OF THE COMPLAINANT UNION AND THAT BY ASSIGNING IT TO MEMBERS OF THE RESPONDENT TRADE UNION, A WORK ASSIGNMENT DISPUTE, AS ENVISAGED BY SECTION 66 OF THE ACT, HAS ARISEN. COUNSEL FURTHER ARGUES THAT SINCE THE RESPONDENT COMPANY HAS IN ITS EMPLOY MEMBERS OF BOTH THE COMPLAINANT AND RESPONDENT TRADE UNIONS THE COMPLAINANT HAS BROUGHT ITSELF WITHIN THE PURVIEW OF THE SECTION EVEN AS CIRCUMSCRIBED BY THE DECISION OF MCRUER, C.J.H.C. IN THE CANADIAN PITTSBURGH INDUSTRIES LIMITED V H. ORLIFFE ET AL. CASE (SUPRA).

6. SECTION 66(1) OF THE ACT READS:

66.-(1) THE BOARD MAY INQUIRE INTO A COMPLAINT THAT A TRADE UNION OR COUNCIL OF TRADE UNIONS, OR AN OFFICER, OFFICIAL OR AGENT OF A TRADE UNION OR COUNCIL OF TRADE UNIONS, WAS OR IS REQUIRING AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION TO ASSIGN PARTICULAR WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION OR IN A PARTICULAR TRADE, CRAFT OR CLASS RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION OR IN ANOTHER TRADE, CRAFT OR CLASS, OR THAT AN EMPLOYER WAS OR IS ASSIGNING WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION, AND IT SHALL DIRECT WHAT ACTION, IF ANY, THE EMPLOYER, THE EMPLOYERS' ORGANIZATION, THE TRADE UNION OR THE COUNCIL OF TRADE UNIONS OR ANY OFFICER, OFFICIAL OR AGENT OF ANY OF THEM OR ANY EMPLOYEE SHALL DO OR REFRAIN FROM DOING WITH RESPECT TO THE ASSIGNMENT OF WORK.

7. IN PREVIOUS COMPLAINTS MADE UNDER SECTION 66 OF THE ACT, THE BOARD HAS CONSTRUED THE CANADIAN PITTSBURGH INDUSTRIES LIMITED V H. ORLIFFE ET AL DECISION (SUPRA) AS VESTING IN THE BOARD JURISDICTION TO ENTERTAIN A COMPLAINT THAT ANY EMPLOYER IS ASSIGNING WORK TO EMPLOYEES IN A PARTICULAR TRADE UNION RATHER THAN TO EMPLOYEES IN ANOTHER TRADE UNION PROVIDED THAT, AS OF THE DATE OF THE MAKING OF THE COMPLAINT, THE EMPLOYER CONCERNED HAD IN ITS EMPLOY MEMBERS, BE IT ONLY ONE, OF BOTH TRADE UNIONS INVOLVED IN THE DISPUTE. IN OUR VIEW, ANY ATTEMPT BY THE BOARD TO DETERMINE WHETHER IT HAS JURISDICTION BASED ON THE NUMBER OF MEMBERS OF EITHER OR BOTH DISPUTING TRADE UNIONS THAT AN EMPLOYER HAD IN ITS EMPLOY, ON THE RELEVANT DATE, IS UNTENABLE. FURTHER, WHETHER OR NOT THE BOARD ISSUES A DIRECTION REQUIRING AN EMPLOYER TO REPLACE MEMBERS OF ONE PARTICULAR TRADE UNION ALREADY IN ITS EMPLOY WITH MEMBERS OF ANOTHER TRADE UNION CLAIMING JURISDICTION OVER THE WORK IN DISPUTE IS A DECISION TO BE MADE BASED ON THE MERITS OF THE DISPUTE. SUCH A POSSIBILITY, HOWEVER, DOES NOT RELATE TO THE ISSUE OF THE BOARD'S JURISDICTION. WE WOULD ADD THAT THE MENS REA OF AN EMPLOYER IN MAKING A WORK ASSIGNMENT IS NOT A CONSIDERATION CONTEMPLATED BY THE LANGUAGE OF SECTION 66(1).

8. THE BOARD THEREFORE FINDS, ON THE AGREED FACTS, THAT IT HAS JURISDICTION TO DEAL WITH THE COMPLAINT ON ITS MERITS.

9. THE BOARD, ACCORDINGLY, DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING FOR THE PURPOSE OF ENTERTAINING THE INSTANT COMPLAINT.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13853-67-R: BAKERY & CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 (APPLICANT) V. SOO DAIRIES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

APPEARANCES AT HEARING: MORRIS ZIMMERMAN FOR THE APPLICANT, JAMES KELLEHER, Q.C., FOR THE RESPONDENT, GEORGE W. PRIDDLE, C.T. MURPHY, Q.C., CALVIN LAMMING, RICHARD WHITNEY FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: APRIL 17, 1968.

1. ON NOVEMBER 6TH, 1967 THE APPLICANT UNION FILED WITH THE BOARD AN APPLICATION FOR CERTIFICATION AS BARGAINING AGENT OF ALL THE EMPLOYEES OF THE RESPONDENT COMPANY AT SAULT STE. MARIE SAVE AND EXCEPT FOREMEN, ROUTE SUPERVISORS, SALES MANAGER AND OFFICE STAFF. THE APPLICATION WAS PROCESSED IN THE USUAL MANNER. THE TERMINAL DATE FIXED FOR THE APPLICATION AS DIRECTED BY THE BOARD WAS NOVEMBER 6TH, 1967. THE HEARING OF THE APPLICATION BY THE BOARD WAS LISTED TO TAKE PLACE AT ITS BOARD ROOM, 8 YORK STREET, TORONTO, ON TUESDAY, NOVEMBER 13TH, 1967 AT 9:15 A.M.

2. NOTICE OF THE APPLICATION FOR CERTIFICATION AND OF HEARING IN FORM 3 WAS MAILED TO THE RESPONDENT ON NOVEMBER 6TH, 1967. THE RESPONDENT'S REPLY IN FORM 9 WAS MAILED TO THE BOARD BY REGISTERED MAIL ON NOVEMBER 10TH, 1967 AND RECEIVED ON NOVEMBER 13TH, 1967.

3. TWO NOTICES OF THE APPLICATION FOR CERTIFICATION AND OF HEARING IN FORM 5 ADDRESSED "TO THE EMPLOYEES OF SOO DAIRIES LIMITED WERE POSTED IN THE PLANT ON NOVEMBER 9TH, 1967 BY THE RESPONDENT IN ACCORDANCE WITH THE PROVISIONS OF SECTION 52(1) OF THE RULES OF PROCEDURE AND REGULATIONS, ONTARIO REGULATION 264/66 UNDER THE LABOUR RELATIONS ACT. CONFIRMATION OF THE POSTINGS WERE RECEIVED BY THE BOARD FROM BOTH THE APPLICANT AND RESPONDENT.

4. ON NOVEMBER 13TH, 1967 THE SOLICITOR FOR THE GROUP OF EMPLOYEES, OBJECTORS, WROTE THE BOARD AS FOLLOWS:

RE: THE BAKERY AND CONFECTIONERY
WORKERS' INTERNATIONAL UNION
OF AMERICA, LOCAL 483 AND
SOO DAIRIES LIMITED

GENTLEMEN:

I AM ENCLOSING HERewith A STATEMENT OF DESIRE SIGNED BY 21 EMPLOYEES OF SOO DAIRIES LIMITED WHEREIN THEY INDICATE THAT THEY DO NOT WISH TO BE REPRESENTED BY THE BAKERY AND CONFECTIONARY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 AS BARGAINING AGENT WITH THEIR EMPLOYER SOO DAIRIES LIMITED.

5. THE STATEMENTS READ AS FOLLOWS:

"IN THE MATTER OF THE ONTARIO LABOUR RELATIONS ACT,

AND

IN THE MATTER OF AN APPLICATION FOR CERTIFICATION AS BARGAINING AGENT BY BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 BETWEEN BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 483 AND SOO DAIRIES LIMITED, SAULT STE. MARIE, ONTARIO.

WE, THE UNDERSIGNED EMPLOYEES OF SOO DAIRIES LIMITED OF SAULT STE. MARIE, ONTARIO, WHO ARE MEMBERS OF THE PROPOSED BARGAINING UNIT IN THE APPLICATION FOR CERTIFICATION MADE BY THE APPLICANT HEREIN WISH TO BRING TO THE ATTENTION OF THE ONTARIO LABOUR RELATIONS BOARD THAT WE DO

NOT WISH TO BECOME MEMBERS OF LOCAL 483 OF THE BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA AND THAT WE DO NOT WISH THE SAID LOCAL TO REPRESENT US AS BARGAINING AGENTS WITH OUR EMPLOYER, SOO DAIRIES LIMITED.

<u>NAME</u>	<u>ADDRESS</u>	<u>DATE</u>	<u>WITNESS</u>
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6. ON NOVEMBER 14TH, 1967 THE REGISTRAR ACKNOWLEDGED RECEIPT OF THE SOLICITOR'S LETTER AS FOLLOWS:

DEAR SIR: RE: BAKERY & CONFECTIONERY WORKERS'
INTERNATIONAL UNION OF AMERICA,
LOCAL 483, AND SOO DAIRIES
LIMITED.

RECEIPT IS ACKNOWLEDGED OF YOUR LETTER OF THE 13TH INSTANT ENCLOSING 2 TYPEWRITTEN STATEMENTS OF DESIRE BEARING VARIOUS DATES, THE FIRST OF WHICH IS SIGNED BY 10 PERSONS, THE SECOND OF WHICH IS SIGNED BY 11 PERSONS, ALL OF WHOM ARE PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT IN THE ABOVE MATTER.

VERY TRULY YOURS,

7. NOTICE OF THE SOLICITOR'S LETTER AND A COPY OF THE STATEMENTS AS SET OUT ABOVE WERE SENT TO THE APPLICANT AND RESPONDENT BY REGISTERED MAIL ON NOVEMBER 14TH, 1967.

8. THE APPLICATION WAS HEARD BY THE BOARD AT TORONTO ON NOVEMBER 13TH, 1967 AS SCHEDULED. MORRIS ZIMMERMAN, INTERNATIONAL REPRESENTATIVE OF THE UNION, APPEARED FOR THE APPLICANT. THERE WAS NO APPEARANCE FOR THE RESPONDENT OR FOR THE GROUP OF EMPLOYEES.

9. ON THE BASIS OF ALL THE EVIDENCE ADDUCED AT THE HEARING, THE BOARD WAS SATISFIED THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT, AT THE TIME THE APPLICATION WAS MADE AND IN THE BARGAINING UNIT DETERMINED BY IT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, WERE MEMBERS OF THE APPLICANT UNION ON NOVEMBER 6TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND A CERTIFICATE WAS ISSUED ACCORDINGLY ON NOVEMBER 22ND, 1967. A COPY OF THE BOARD'S DECISION WAS SENT TO THE APPLICANT, THE RESPONDENT, AND TO THE SOLICITOR FOR THE GROUP OF EMPLOYEES WHO INTERVENED IN THE PROCEEDINGS AS OBJECTORS.

10. ON DECEMBER 14TH, 1967 THE BOARD RECEIVED THE FOLLOWING LETTER FROM MESSRS. O'DRISCOLL, KELLY AND McRAE, BARRISTERS, SOLICITORS, ETC., TORONTO, WHICH READ AS FOLLOWS:

ATTENTION: A. M. BRUNSKILL, ESQ., REGISTRAR

DEAR SIRs:

RE: BAKERY & CONFECTIONERY WORKERS'
INTERNATIONAL UNION OF AMERICA,
LOCAL 483, AND SOO DAIRIES LIMITED,
YOUR FILE 13853-67-R

ENCLOSED PLEASE FIND A PHOTOSTATIC COPY OF A LETTER WHICH I RECEIVED FROM MR. C. T. MURPHY, Q.C., OF SAULT STE. MARIE, ONTARIO, WHICH IS DATED NOVEMBER 27, 1967, THE CONTENTS OF WHICH I DEEM TO BE SELF EXPLANATORY.

IN THE SECOND PARAGRAPH OF MR. MURPHY'S LETTER HE STATES THAT AT THE FALL CONFERENCE OF THE ADVOCATES CLUB WHICH WAS HELD IN TORONTO ON NOVEMBER 17 AND 18, HE SPOKE WITH ME AND ARRANGE THAT I WOULD ACT AS HIS AGENT FOR THE PURPOSE OF APPEARING WITH HIS CLIENTS BEFORE THE BOARD AT THE TIME OF THE HEARING; THIS I VERIFY, AND AT THAT TIME MR. MURPHY ALSO TOLD ME THAT HE WOULD LET ME KNOW AS SOON AS HE RECEIVED NOTIFICATION OF THE DATE OF THE HEARING.

THE NEXT I HEARD FROM MR. MURPHY WAS AFTER HE HAD SPOKEN TO YOU BY TELEPHONE, AS IS SET OUT IN THE SECOND PARAGRAPH ON PAGE 2 OF THE ENCLOSED LETTER.

THIS LETTER IS THEREFORE WRITTEN BY WAY OF AN APPLICATION TO RE-OPEN THE MATTER SO THAT THE GROUP OF EMPLOYEES DESIRING TO BE HEARD MAY BE HEARD BY THE BOARD IN THE USUAL WAY.

THIS REQUEST UNDOUBTEDLY APPEARS UNUSUAL, BUT I WOULD URGE THAT THE MATTER BE RE-OPENED BECAUSE IT IS OBVIOUS THAT A GROUP OF EMPLOYEES SIGNED A PETITION; BECAUSE OF A MISUNDERSTANDING ON THE PART OF THEIR SOLICITOR, AND THROUGH NO FAULT OF THEIR OWN, THEY NOW FIND THAT THEY HAVE BEEN DENIED "THEIR DAY IN COURT".

I WOULD BE PLEASED TO HEAR FROM YOU AT YOUR EARLIEST CONVENIENCE.

YOURS VERY TRULY,

11. THE SOLICITOR'S LETTER TO MESSRS. O'DRISCOLL, KELLY AND MCRAE READS AS FOLLOWS:

DEAR SIR:

ON FRIDAY, NOVEMBER 10TH, I WAS CONSULTED BY MR. RICHARD WHITNEY AND MR. CALVIN LAMMING, BOTH EMPLOYEES OF SOO DAIRIES LIMITED. I WAS ADVISED THAT THESE TWO MEN REPRESENTED A NUMBER OF EMPLOYEES WHO WISHED TO OPPOSE AN APPLICATION BY THE CAPTIONALLY-NOTED UNION FOR CERTIFICATION AS BARGAINING AGENT WITH THE CAPTIONALLY-NOTED COMPANY. I PREPARED A FORM OF PETITION, A COPY OF WHICH IS ENCLOSED, AND GAVE THEM THE USUAL INSTRUCTIONS WITH REFERENCE TO THE OBTAINING OF SIGNATURES OF OPPOSING EMPLOYEES AND DEFINITELY ADVISING THAT NO APPROACH COULD BE MADE TO EMPLOYEES ON COMPANY TIME OR ON COMPANY PROPERTY. ON NOVEMBER 13TH THE PETITIONS WERE RETURNED TO THE WRITER AND AS INDICATED ON THE ENCLOSED COPIES HAD BEEN SIGNED BY 21 EMPLOYEES OF THE CAPTIONALLY-NOTED COMPANY, ALL OF WHOM PURPORTED TO BE PART OF THE BARGAINING UNIT OF 36 EMPLOYEES FOR WHICH CERTIFICATION WAS SOUGHT. THE ORIGINAL OF THE ENCLOSED PETITIONS WAS FORWARDED TO THE REGISTRAR OF THE ONTARIO LABOUR RELATIONS BOARD BY REGISTERED MAIL ON NOVEMBER 13TH AND I HAVE ON FILE A LETTER FROM MR. BRUNSKILL, REGISTRAR OF THE BOARD DATED NOVEMBER 14TH WHEREIN RECEIPT OF THE SAID PETITIONS WAS ACKNOWLEDGED.

YOU WILL RECALL THAT WHEN I WAS IN TORONTO ATTENDING THE FALL CONFERENCE OF THE ADVOCATE SOCIETY ON THE WEEK-END OF NOVEMBER 18TH, I MENTIONED THIS MATTER TO YOU, AT WHICH TIME WE ARRANGED THAT YOU WOULD ACT AS MY AGENT FOR THE PURPOSE OF APPEARING WITH MY CLIENTS BEFORE THE BOARD AT THE TIME OF THE HEARING.

I AT NO TIME SAW THE NOTICE WHICH WAS POSTED AT THE COMPANY PREMISES ADVISING OF THE DATE OF HEARING. ON TWO OTHER OCCASIONS I ACTED FOR EMPLOYEES OF OTHER COMPANIES UNDER SIMILAR CIRCUMSTANCES AND ON EACH OF THOSE

OCCASIONS I RECEIVED A NOTICE FROM THE ONTARIO LABOR RELATIONS BOARD ADVISING OF THE DATE OF HEARING. ON THOSE OCCASIONS I WAS ABLE TO MAKE THE NECESSARY ARRANGEMENTS TO HAVE THE EMPLOYEES WHO CIRCULATED THE PETITION IN QUESTION APPEAR IN TORONTO AND ALSO WAS ABLE TO MAKE ARRANGEMENTS TO HAVE YOU APPEAR ON THEIR BEHALF AT THE HEARING. ON THIS OCCASION I ADVISED THE EMPLOYEES ON NOVEMBER 13TH THAT THEY HAD NOTHING FURTHER TO DO UNTIL THEY HEARD FROM ME WITH REFERENCE TO THE DATE OF HEARING AND AS SOON AS I HAD NOTICE OF THE DATE, I WOULD BE IN TOUCH WITH THEM FOR THE PURPOSE OF GIVING THEM INSTRUCTIONS AS TO WHERE TO MEET WITH YOU, ETC. AT THE TIME OF THE HEARING IN TORONTO. UNFORTUNATELY, I RECEIVED NO FORMAL NOTICE OF THE HEARING AND THEREFORE WAS NOT FURTHER IN TOUCH WITH YOU NOR DID I NOTIFY OR GET IN TOUCH WITH THE EMPLOYEES IN QUESTION. THE OBVIOUS RESULT WAS THAT THE SAID EMPLOYEES WERE NOT PRESENT NOR WERE THEY REPRESENTED AT THE HEARING WHICH WAS HELD ON EITHER NOVEMBER 21ST OR NOVEMBER 22ND LAST. A COPY OF THE DECISION REACHED BY THE BOARD AT THAT HEARING DATED NOVEMBER 22ND IS ENCLOSED HERewith.

AFTER RECEIVING THE DECISION REFERRED TO ABOVE, I TELEPHONED MR. BRUNSKILL AND ADVISED HIM OF MY PREDICAMENT. HE ADVISED ME THAT IT WAS NOT THE PRACTICE OF THE BOARD TO SEND FORMAL NOTICES IN ADDITION TO THE ORIGINAL NOTICE OF APPLICATION OF HEARING UNLESS THE DATE OF HEARING MENTIONED IN THE ORIGINAL NOTICE IS CHANGED. IT NOW BECOMES OBVIOUS THAT IN THE OTHER CASES IN WHICH I HAD BEEN INVOLVED, THE ORIGINAL DATE OF HEARING HAD BEEN CHANGED AND IT WAS FOR THAT REASON I RECEIVED NOTICES OF HEARING AND IT WAS FOR THAT REASON THAT I WAS OF THE OPINION THAT THE BOARD NOTIFIED COUNSEL OF THE DATE OF HEARING. AS IT MUST BE OBVIOUS TO YOU, IT WOULD NOW APPEAR THAT THE BOARD HAS REACHED A DECISION IN THIS MATTER AND THAT MY CLIENTS AND THE PEOPLE THEY REPRESENT ARE AFFECTED BY THAT DECISION DESPITE THE FACT THAT THEY DID NOT HAVE, BECAUSE OF A MISTAKE ON MY PART, AN OPPORTUNITY TO BE HEARD AT THE HEARING AT WHICH THE DECISION WAS REACHED.

I SHOULD POINT OUT THAT BOTH OF MY CLIENTS WERE READY, WILLING AND ABLE TO ATTEND THE HEARING IN QUESTION.

I WOULD APPRECIATE YOUR TAKING THIS MATTER UP WITH THE ONTARIO LABOR RELATIONS BOARD IN THE HOPE THAT YOU MIGHT CONVINCE THE MEMBERS OF THE BOARD TO REVIEW THE APPLICATION AND POSSIBLY GIVE MY CLIENTS AN OPPORTUNITY TO BE HEARD.

YOURS TRULY,

12. IT IS CLEAR FROM THE ABOVE LETTERS THAT THE SOLICITOR FOR THE OBJECTORS BASED ON PREVIOUS EXPERIENCE, TOOK IT FOR GRANTED THAT HE WOULD RECEIVE NOTICE OF HEARING FROM THE BOARD AND INSTRUCTED HIS CLIENTS TO DO NOTHING UNTIL HE COMMUNICATED WITH THEM FURTHER. UNFORTUNATELY, HIS ASSUMPTION WAS IN ERROR BECAUSE THE NOTICES OF HEARINGS WHICH HE HAD PREVIOUSLY RECEIVED IN OTHER CASES WERE IN RESPECT OF A CHANGE IN DATE OF THE HEARING AS THE ORIGINAL HEARING HAD BEEN CANCELLED. AT THE "SHOW CAUSE" HEARING HELD AT SAULT STE. MARIE ON FEBRUARY 16TH, 1968, THE SOLICITOR APPEARED IN PERSON AND RE-AFFIRMED THE ABOVE STATEMENTS.

13. THE NOTICE TO EMPLOYEES IN FORM 5 CLEARLY INDICATED THE TERMINAL DATE AS WELL AS THE DATE AND TIME OF THE HEARING. IT FURTHER STATED IN BOLD CAPITAL LETTERS THE FOLLOWING:

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.*

*EXPLANATORY NOTE: WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE, OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED IN PARAGRAPH 8 ABOVE, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

14. ON THE BASIS OF THE ABOVE EVIDENCE, IT IS ABUNDANTLY CLEAR THAT THE EMPLOYEES CONCERNED HAD AMPLE NOTICE OF THE BOARD HEARING TO BE HELD IN TORONTO ON NOVEMBER 21ST, 1967. THEY FAILED TO APPEAR AT THE HEARING BECAUSE THEIR COUNSEL, THROUGH AN UNFORTUNATE MISUNDERSTANDING OF BOARD PROCEDURE ON HIS PART, ADVISED THEM TO TAKE NO FURTHER ACTION UNTIL HE HAD RECEIVED NOTICE OF HEARING FROM THE BOARD. HE COULD HAVE ASKED THE EMPLOYEES TO SECURE THE DATE OF THE HEARING FROM THE NOTICE IN THE PLANT (FORM 5) FROM WHICH THEY HAD

OBTAINED THE TERMINAL DATE CONCERNING WHICH THEY HAD ADVISED THE SOLICITOR; OR, IN HIS LETTER OF NOVEMBER 13TH, HE COULD HAVE REQUESTED THE REGISTRAR TO SEND HIM A COPY OF THE APPLICATION, NOTICE OF HEARING AND THE REPLY OF THE RESPONDENT. THIS HE FAILED TO DO.

15. IN THESE CIRCUMSTANCES, THE BOARD ADOPTS THE VIEW EXPRESSED IN THE FOLLOWING QUOTATION FROM THE ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, BOARD FILE NO. 14177-67-R:

WHILE COUNSEL FOR THE INTERVENER ARGUED THAT HIS CLIENT SHOULD NOT BE SADDLED WITH HIS MISTAKE OR THE MISTAKE OF HIS EMPLOYEE, THE BOARD IS OF OPINION THAT A CLIENT MUST ASSUME RESPONSIBILITY FOR THE MISTAKE OF HIS SOLICITOR. IT CANNOT SERIOUSLY BE ARGUED THAT LEGAL COUNSEL CAN MAKE MISTAKES WITH IMPUNITY OR THAT THEIR MISTAKES DO NOT CARRY THE SAME WEIGHT AS SIMILAR MISTAKES MADE PERSONALLY BY A PARTY. WE ARE OF THE VIEW THAT COUNSEL'S RESPONSIBILITIES ARE NO LESS ONEROUS THAN THE RESPONSIBILITIES IMPOSED UPON A PARTY IN ANY PROCEEDING AND A PARTY CANNOT EVADE THE RESULTS OF MISTAKES MADE BY COUNSEL RETAINED BY THE PARTY.

16. IN ALL THE CIRCUMSTANCES, THE BOARD DOES NOT DEEM IT ADVISABLE TO REVIEW ITS DECISION OF NOVEMBER 22ND, 1967.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - LOCKOUT

UNLAWFUL

14223-67-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 1687 (APPLICANT) V. BEAMER AND LATHROP LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. KOSKIE AND L. POPOVITCH FOR THE APPLICANT, AND S. S. MACINNES, Q.C., GORDON A. READ, AND GEORGE W. PATTERSON FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER: APRIL 8, 1968.

1. THE RESPONDENT HAS REQUESTED THAT THE BOARD RECONSIDER ITS DECISION OF MARCH 8TH, 1968, IN THIS MATTER.

2. IN ITS REQUEST THE RESPONDENT MAKES REFERENCE TO A NUMBER OF DOCUMENTS FILED BY IT PRIOR TO THE HEARING AND SUBMITS THAT THESE

AFFORDED AMPLE EVIDENCE IN SUPPORT OF THE POSITION IT TOOK AT THE HEARING. IT SUBMITS THAT NO QUESTION WAS RAISED BY THE BOARD THAT THESE LETTERS WERE NOT SUFFICIENT PROOF OF THE FACTS CONTAINED THEREIN AND THAT THE APPLICANT DID NOT CONTEST THE VALIDITY, THE ACCURACY, OR THE AUTHENTICITY OF THE DOCUMENTS FILED BY THE RESPONDENT.

3. THE DOCUMENTS FILED BY THE RESPONDENT WERE FILED OF ITS OWN VOLITION AND NOT IN RESPONSE TO ANY REQUIREMENT OF THE BOARD. IT HARDLY SEEMS NECESSARY TO SAY THAT THEY CANNOT BE TREATED AS EVIDENCE BY THE BOARD UNTIL DULY ENTERED IN THE USUAL WAY BY THE RESPONDENT AT THE HEARING AND OPENED TO CROSS-EXAMINATION. THE BOARD WOULD BE ACTING MOST IMPROPERLY IN A CONTENTIOUS PROCEEDING IF IT WERE TO PREJUDGE THE EFFECT TO BE GIVEN ANY DOCUMENTS FILED OR RAISE ANY QUESTION AS TO THE SUFFICIENCY OF PROOF CONTAINED IN SUCH DOCUMENTS IN ADVANCE OF A HEARING, AS SEEMS TO BE SUGGESTED BY THE RESPONDENT. FURTHERMORE, THE BOARD WOULD NOT PRESUME TO INTERFERE WITH THE DISCRETION OF COUNSEL FOR ANY PARTY AS TO THE MANNER IN WHICH HE SHOULD CONDUCT HIS CASE OR AS TO WHAT EVIDENCE HE SHOULD PRESENT. IT DID, HOWEVER, IN THIS CASE REMIND COUNSEL THAT IN MOVING FOR DISMISSAL AT THE CLOSE OF THE APPLICANT'S CASE HE WOULD BE PRECLUDED FROM CALLING EVIDENCE IN THE EVENT THAT HIS MOTION FAILED. COUNSEL INDICATED THAT HE WAS AWARE OF THIS.

4. INsofar AS THE SUBMISSION THAT THE APPLICANT DID NOT CONTEST THE VALIDITY, ACCURACY, OR AUTHENTICITY OF THE DOCUMENTS IS CONCERNED, WE WOULD MAKE THE FOLLOWING GENERAL OBSERVATIONS: SINCE THE DOCUMENTS WERE NOT, IN FACT, INTRODUCED AS EVIDENCE IN THE NORMAL WAY, THE APPLICANT WOULD HAVE NO REASON TO CHALLENGE THEM. THE FACT THAT IT CHOSE NOT TO CHALLENGE THE DOCUMENTS BEFORE THEY WERE OFFERED AS EVIDENCE CANNOT, IN OUR OPINION, BE TAKEN IN ANY WAY TO MEAN THE APPLICANT ADMITTED THE VALIDITY, ETC., OF THE DOCUMENTS WHICH MIGHT OR MIGHT NOT, INsofar AS HE COULD BE AWARE, BE USED BY THE RESPONDENT.

5. MORE PARTICULARLY WE WOULD POINT OUT THAT, DURING AN ATTEMPT MADE BY THE APPLICANT AND THE RESPONDENT AT THE HEARING TO BRING ABOUT AGREEMENT AS TO CERTAIN FACTS, THE RESPONDENT SOUGHT TO QUALIFY AN ADMISSION OF LAY-OFF ON FEBRUARY 22ND BY REFERENCE TO THE REASONS THEREFOR ALLUDED TO IN ONE OF THE DOCUMENTS. THE APPLICANT OBJECTED TO THE INCLUSION OF THE QUALIFICATION ON THE GROUNDS THAT IT WAS NOT ADMITTING THE ALLEGATIONS IN THE RESPONDENT'S DOCUMENTS, AND POINTED OUT THAT THE RESPONDENT WAS FREE TO ATTEMPT TO PROVE THE QUALIFICATIONS BY EVIDENCE. THE BOARD AT THIS JUNCTURE ALSO ADVISED THE RESPONDENT THAT IT WOULD HAVE AN OPPORTUNITY LATER TO ENTER ITS DOCUMENTARY EVIDENCE IF IT SO DESIRED.

6. THE RESPONDENT FURTHER SUBMITTED THAT WHAT IT REFERS TO AS A CONCLUSION CONTAINED IN PARAGRAPH 5 OF THE BOARD'S DECISION CANNOT BE SUPPORTED BY THE EVIDENCE. THE BOARD WOULD POINT OUT THAT THE PARAGRAPH COMPRISES SIMPLY A PARAPHRASE OF THE EVIDENCE GIVEN BY THE WITNESS RILEY AND DOES NOT PURPORT TO REACH ANY CONCLUSION.

7. THE RESPONDENT WAS AFFORDED AN OPPORTUNITY TO ADDUCE EVIDENCE AT THE HEARING. FURTHER, IT WAS ADVISED AT THE HEARING THAT IF ITS MOTION WERE DENIED IT WOULD BE PRECLUDED FROM CALLING EVIDENCE. ALL OF THE EVIDENCE IT NOW SEEKS TO ADDUCE WAS AVAILABLE TO IT AT THE HEARING, AND THE RESPONDENT DOES NOT ALLEGE TO HAVE NEW EVIDENCE NOW AVAILABLE AT THAT TIME. IN THE CIRCUMSTANCES THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY, OR REVOKE ITS DECISION DATED MARCH 8TH, 1968. THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED.

DECISION OF BOARD MEMBER R. W. TEAGLE:

APRIL 8, 1968.

1. WITHOUT DEROGATING FROM MY OPINION THAT THE BOARD WAS IN ERROR IN ITS DECISION OF MARCH 8TH, 1968, I CONCUR WITH THE MAJORITY DECISION WHEREIN THE RESPONDENT'S REQUEST FOR RECONSIDERATION IS DENIED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

14212-67-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. CON-BRIDGE LIMITED (RESPONDENT).

4. AFTER CAREFULLY CONSIDERING THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF THE PARTIES MADE IN CONNECTION THEREWITH, WE HAVE COME TO THE CONCLUSION THAT THE APPROPRIATE BARGAINING UNIT IN THIS MATTER IS ONE CONSISTING OF CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS. THE BOARD THEREFORE FURTHER FINDS THAT ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. AT THE HEARING IN THIS MATTER THE BOARD RULED THAT IT WAS SATISFIED THAT THE APPLICANT ADMITTED TO FULL MEMBERSHIP PERSONS IN THE CLASSIFICATIONS AFFECTED BY THIS APPLICATION. IN ITS RULING THE BOARD REFERRED TO ITS DECISION IN A. K. PENNER & SONS LTD. CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 493 AND TO THE CONSTITUTION OF THE APPLICANT AS AMENDED JANUARY 1, 1967.

(APRIL 5, 1968).

14327-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) v. W.D. LAFLAMME GENERAL CONTRACTOR LIMITED (RESPONDENT)

3. HAVING CONSIDERED THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES WITH REGARD TO BOTH THE TIMELINESS OF THE INSTANT APPLICATION AND THE APPROPRIATENESS OF THE BARGAINING UNIT WHICH THE APPLICANT IS SEEKING, THE BOARD IS SATISFIED THAT THE APPLICANT HAS ESTABLISHED

ENTITLEMENT TO CERTIFICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT CONSISTING OF ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS. WE WOULD MENTION HERE THAT THE BOARD HAS ALREADY FOUND THAT THE APPLICANT ADMITS TO FULL MEMBERSHIP PERSONS IN THE CLASSIFICATIONS AFFECTED BY THIS APPLICATION. (SEE A. K. PENNER & SONS LIMITED CASE O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 493). (APRIL 8, 1968).

14333-67-R: THE BRICKLAYERS MASON'S AND PLASTERERS INTERNATIONAL UNION OF AMERICA LOCAL #10 (APPLICANT) V. S. & G. MASONRY (RESPONDENT).

3. THE APPLICANT FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, CONCERNING EVIDENCE OF MEMBERSHIP SUBMITTED ON BEHALF OF TWO PERSONS. THIS DECLARATION STATES THAT THERE WERE THREE PERSONS WHO WERE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT THAT THE APPLICANT CLAIMS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING, ON THE DATE OF THE MAKING OF THE APPLICATION. THE APPLICANT ALSO FILED TWO DUES BOOKS THAT WERE COUNTERSIGNED BY AN OFFICER OF THE APPLICANT AND INDICATE THAT MONTHLY DUES OF AT LEAST \$3.00 HAVE BEEN PAID WITHIN THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE TERMINAL DATE OF THIS APPLICATION. ONE OF THE DUES BOOKS IS SIGNED BY THE MEMBER. THE OTHER DUES BOOK WAS NOT SIGNED BY THE EMPLOYEE IN RESPECT OF WHOM IT WAS SUBMITTED. SUBSECTION 1 OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE PROVIDES THAT THE BOARD SHALL NOT ACCEPT EVIDENCE OF MEMBERSHIP IN A TRADE UNION UNLESS IT IS SIGNED BY THE EMPLOYEE, (SEE PAGE MANUFACTURING COMPANY LIMITED CASE O.L.R.B. MONTHLY REPORTS MARCH 1963, P. 517). THE BOARD THEREFORE, FINDS THAT ONLY ONE OF THE DUES BOOKS SUBMITTED BY THE APPLICANT IS ACCEPTABLE AS EVIDENCE OF MEMBERSHIP IN A TRADE UNION FOR THE PURPOSES OF SECTION 7 OF THE LABOUR RELATIONS ACT.

(APRIL 4, 1968).

14377-67-R: 'LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 493 (APPLICANT) V. MELDON CONSTRUCTION (NORTH BAY) LIMITED (RESPONDENT).

5. THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF DYMOND, BUCKE AND COLEMAN AND IN THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, AND THE TOWNSHIP OF SOUTH LORRAIN IN THE DISTRICT OF TIMISKAMING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(APRIL 5, 1968).

14446-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CONCRETE COLUMN CLAMPS (1961) LTD. (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER) V. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION LOCAL UNION No. 124 (INTERVENER).

5. THE RESPONDENT HAS INFORMED THE BOARD THAT ON THE DATE OF THE MAKING OF THIS APPLICATION IT HAD ONLY CARPENTERS AND LABOURERS IN ITS EMPLOY IN THE COUNTY OF RENFREW. THE APPLICANT REPRESENTS EMPLOYEES IN BOTH THESE CLASSIFICATIONS. IN ACCORDANCE WITH THE BOARD'S POLICY ENUNCIATED IN THE WINTER & SON CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 889, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT DATED JUNE 9TH, 1965, BETWEEN THE RESPONDENT AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT DATED JULY 31ST, 1967, BETWEEN THE RESPONDENT AND THE OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION LOCAL UNION No. 124, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(APRIL 30, 1968).

ADDENDA

THE FOLLOWING CASE WAS INADVERTENTLY OMITTED FROM THE SEPTEMBER 1967 MONTHLY REPORT:

12748-66-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. CLAIRSON CONSTRUCTION COMPANY LIMITED (RESPONDENT) v. CLAIRSON EMPLOYEES' ASSOCIATION (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: R. KOSKIE AND H. HERRON FOR THE APPLICANT; W. S. COOK AND V. SIMPSON FOR THE RESPONDENT; AND L. D. SMITH FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 6, 1967.

1. IN THIS APPLICATION FOR CERTIFICATION THE APPLICANT PROPOSED ITS REGULAR CRAFT ENGINEERS BARGAINING UNIT. IN PARAGRAPH 4 OF THE BOARD'S DECISION DATED APRIL 12TH, 1967, (SEE O.L.R.B. MONTHLY REPORT APRIL 1967 P. 49) IT WAS INDICATED THAT THE INTERVENER AND THE RESPONDENT DISAGREED WITH THE UNIT PROPOSED BY THE APPLICANT AND, SUBSEQUENTLY IN THE BOARD'S DECISION DATED APRIL 20TH, 1967, AN EXAMINER WAS APPOINTED TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT.

2. AFTER CONSIDERING ALL THE EVIDENCE IN THIS CASE, INCLUDING THE REPORT OF THE EXAMINER, TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES, WE ARE SATISFIED THAT THIS IS A PROPER CASE FOR GRANTING THE

APPLICANT ITS USUAL CRAFT UNIT. THE BOARD THEREFORE FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. HAVING REGARD TO THE BOARD'S FINDINGS IN ITS DECISION DATED APRIL 12TH, 1967 AND TO THE FURTHER REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE ONLY FIVE PERSONS, NAMELY, DONALD DIETRICH, CLAUDE ENMAN, ARTHUR FIEGEHAN, ROBERT DONALD RIGBY AND FRANK CASALE, WHO MIGHT BE CONSIDERED AS ELIGIBLE FOR INCLUSION IN THE ABOVE-DESCRIBED BARGAINING UNIT. ON THE EVIDENCE BEFORE US IT IS CLEAR, AND THE PARTIES SO AGREE, THAT DIETRICH, FIEGEHAN, RIGBY AND CASALE WERE EMPLOYED FOR MORE THAN 50% OF THEIR TIME AS "ENGINEERS". HOWEVER, THE EVIDENCE FAILS TO SATISFY US THAT ENMAN WAS SO EMPLOYED. RATHER, WE ARE SATISFIED THAT HE SPENT OVER 50% OF HIS TIME DRIVING A TRUCK. IT IS ALSO AGREED THAT CASALE DID NOT OPERATE ANY EQUIPMENT ON FEBRUARY 14TH, 1967, THE DATE OF THE MAKING OF THE APPLICATION. IN THESE CIRCUMSTANCES, THEREFORE, THE BOARD FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE THREE EMPLOYEES IN THE BARGAINING UNIT, NAMELY, DONALD DIETRICH, ARTHUR FIEGEHAN AND ROBERT DONALD RIGBY.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 21ST, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

6. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

A REQUEST FOR RECONSIDERATION OF THIS DECISION WAS DENIED BY THE BOARD ON SEPTEMBER 21, 1967, SEE O.L.R.B. MONTHLY REPORT SEPTEMBER 1967 P. 606.

STATISTICAL TABLES FOR APRIL 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	APRIL 1968	1ST MONTH OF FISCAL YEAR 1968-69	1967-68
I. CERTIFICATION	108	108	84
II. DECLARATION TERMINATING BARGAINING RIGHTS	4	4	8
III. DECLARATION OF SUCCESSOR STATUS	3	3	-
IV. DECLARATION THAT STRIKE UNLAWFUL	2	2	3
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI. CONSENT TO PROSECUTE	4	4	16
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	20	20	6
VIII. MISCELLANEOUS	<u>7</u>	<u>7</u>	<u>2</u>
TOTAL	<u>148</u>	<u>148</u>	<u>119</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	APRIL 1968	1ST MONTH OF FISCAL YEAR 1968-69	1967-68
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	98	98	91

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	<u>APRIL</u> <u>1968</u>	<u>1ST MONTH OF FISCAL YEAR</u> <u>1968-69</u>	<u>1967-68</u>
I. CERTIFICATION	98	98	91
II. DECLARATION TERMINATING BARGAINING RIGHTS	7	7	4
III. DECLARATION OF SUCCESSOR STATUS	7	7	1
IV. DECLARATION THAT STRIKE UNLAWFUL	2	2	4
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	-	-
VI. CONSENT TO PROSECUTE	12	12	5
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	25	25	17
VIII. MISCELLANEOUS	<u>10</u>	<u>10</u>	<u>6</u>
TOTAL	<u>161</u>	<u>161</u>	<u>128</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES</u>		
	<u>APRIL</u> <u>1968</u>	<u>1ST MTH</u> <u>1968-69</u>	<u>FISCAL YR.</u> <u>1967-68</u>	<u>APRIL</u> <u>1968</u>	<u>1ST MTH</u> <u>1968-69</u>	<u>FISCAL YR.</u> <u>1967-68</u>
<u>I. CERTIFICATION</u>						
GRANTED	67	67	74	3461	3461	201
DISMISSED	18	18	12	262	262	129
WITHDRAWN	13	13	5	231	231	7
TOTAL	<u>98</u>	<u>98</u>	<u>91</u>	<u>3954</u>	<u>3954</u>	<u>337</u>
<u>II. TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	4	4	3	99	99	8
DISMISSED	2	2	1	21	21	
WITHDRAWN	<u>1</u>	<u>1</u>	<u>-</u>	<u>19</u>	<u>19</u>	
TOTAL	<u>7</u>	<u>7</u>	<u>4</u>	<u>139</u>	<u>139</u>	<u>8</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS GRANTED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

<u>NUMBER OF APPLICATIONS</u>		
<u>APRIL</u>	<u>1ST MONTH OF FISCAL YR.</u>	
<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>

III. DECLARATION THAT STRIKE
UNLAWFUL

GRANTED	-	-	-
DISMISSED	-	-	-
WITHDRAWN	<u>2</u>	<u>2</u>	<u>4</u>
TOTAL	<u><u>2</u></u>	<u><u>2</u></u>	<u><u>4</u></u>

IV. DECLARATION THAT LOCKOUT
UNLAWFUL

GRANTED	-	-	-
DISMISSED	-	-	-
WITHDRAWN	<u>-</u>	<u>-</u>	<u>-</u>
TOTAL	<u><u>-</u></u>	<u><u>-</u></u>	<u><u>-</u></u>

V. CONSENT TO PROSECUTE

GRANTED	2	2	-
DISMISSED	4	4	-
WITHDRAWN	<u>6</u>	<u>6</u>	<u>5</u>
TOTAL	<u><u>12</u></u>	<u><u>12</u></u>	<u><u>5</u></u>

VI. COMPLAINT OF UNFAIR
PRACTICE IN EMPLOYMENT
(SECTION 65)

GRANTED	1	1	2
DISMISSED	8	8	1
WITHDRAWN	<u>16</u>	<u>16</u>	<u>14</u>
TOTAL	<u><u>25</u></u>	<u><u>25</u></u>	<u><u>17</u></u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	APRIL 1968	1ST MONTH FISCAL YEAR 1968-69	1967-68
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	3	3	1
POST-HEARING VOTE	6	6	6
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	-	1
POST-HEARING VOTE	2	2	3
BALLOTS NOT COUNTED	-	-	-
TOTAL	<u>11</u>	<u>11</u>	<u>11</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	APRIL 1968	1ST MONTH FISCAL YEAR 1968-69	1967-68
*RESPONDENT UNION SUCCESSFUL	-	-	1
RESPONDENT UNION UNSUCCESSFUL	<u>2</u>	<u>2</u>	<u>3</u>
TOTAL	<u>2</u>	<u>2</u>	<u>4</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS / OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESP

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ONTARIO LABOUR RELATIONS BOARD

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING MAY 1968

BARGAINING AGENTS CERTIFIED DURING MAY

NO VOTE CONDUCTED

13901-67-R: NURSES' ASSOCIATION OTTAWA CIVIC HOSPITAL (APPLICANT) v.
TRUSTEES OF THE OTTAWA CIVIC HOSPITAL (RESPONDENT).

UNIT: "ALL REGISTERED OR GRADUATE NURSES EMPLOYED AS GENERAL STAFF NURSES BY THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT HEAD NURSES AND PERSONS ABOVE THE RANK OF HEAD NURSE." (713 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES)

FOR THE PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE FOLLOWING CLASSIFICATIONS ARE INCLUDED IN THE BARGAINING UNIT:

REGISTERED OR GRADUATE NURSES EMPLOYED AS GENERAL STAFF NURSES AND WORKING FOR MORE THAN TWENTY-FOUR HOURS PER WEEK; REGISTERED OR GRADUATE NURSES EMPLOYED AS GENERAL STAFF NURSES REGULARLY WORKING FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK (FOR THE PURPOSE OF CLARITY THIS SHALL BE DEEMED TO INCLUDE ONLY THOSE UNDER A WRITTEN CONTRACT BETWEEN THE HOSPITAL AND THE NURSE TO WORK ON A REGULAR PART-TIME BASIS); ASSISTANT HEAD NURSES; HEALTH SERVICE NURSES; PUBLIC HEALTH NURSES; X-RAY DEPARTMENT NURSE; NURSES EMPLOYED IN THE EXPERIMENTAL SURGERY DEPARTMENT.

IT IS ALSO AGREED THAT THE FOLLOWING POSITIONS WILL BE IN THE BARGAINING UNIT ONLY WHEN THE POSITIONS ARE OCCUPIED BY REGISTERED OR GRADUATE NURSES:

ADMINISTRATIVE ASSISTANTS TO HEAD NURSES; SUPERVISOR OF ROTATION; RECEPTIONIST; REGISTRAR IN THE SCHOOL OF NURSING; POISON INFORMATION CENTRE; INFECTION CONTROL OFFICER; ADMITTING NURSE.

REGISTERED OR GRADUATE NURSES IN THE FOLLOWING SPECIALTY UNITS SHALL ALSO BE INCLUDED IN THE BARGAINING UNIT PROVIDING THE JOB DESCRIPTIONS REQUIRE A NURSE:

RENAL DIALYSIS UNIT; GASTRO-INTESTINAL UNIT;
NURSE TECHNICIANS.

THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT INSTRUCTORS IN THE SCHOOL OF NURSING AND THE SCHOOL OF NURSING ASSISTANTS ARE INCLUDED IN THE BARGAINING UNIT.

THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THE FOLLOWING POSITIONS ARE EXCLUDED FROM THE BARGAINING UNIT:

IN-SERVICE CO-ORDINATORS; SCHOOL OF NURSING - DIRECTOR, ASSISTANT DIRECTOR, ADMINISTRATIVE ASSISTANT; SCHOOL OF NURSING ASSISTANTS - DIRECTOR; X-RAY DEPARTMENT - A) ADMISSION CHEST X-RAY UNIT, CHIEF TECHNICIAN, B) ASSISTANT CHIEF RADIOGRAPHER; NURSES EMPLOYED IN RESEARCH; NURSES EMPLOYED IN THE LIBRARIES OF THE SCHOOL OF NURSING AND OF THE HOSPITAL; THE DIRECTOR AND THE CLINICAL DIRECTOR OF NURSE TECHNICIANS; CHIEF TECHNOLOGIST IN THE RENAL DIALYSIS UNIT; CHIEF TECHNOLOGIST IN THE GASTRO-INTESTINAL UNIT.

14076-67-R: NURSES' ASSOCIATION METROPOLITAN GENERAL HOSPITAL (APPLICANT) V. THE METROPOLITAN GENERAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE METROPOLITAN GENERAL HOSPITAL IN WINDSOR ENGAGED IN NURSING AND TEACHING, SAVE AND EXCEPT HEAD NURSES AND THOSE ABOVE THE RANK OF HEAD NURSE."
(223 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES)

FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE ORDERLY SUPERVISOR, THE HEALTH NURSE, IN-SERVICE NURSING INSTRUCTORS AND INSTRUCTORS OF THE SCHOOL OF NURSING ARE INCLUDED IN THE PROPOSED BARGAINING UNIT, AND THAT NURSES WHO MAY BE ENGAGED IN TECHNICAL, CLERICAL AND OFFICE FUNCTIONS ARE EXCLUDED FROM THE PROPOSED BARGAINING UNIT.

14230-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. R. S. HARDY CONSTRUCTION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(6 EMPLOYEES IN THE UNIT).

14232-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. BENDIX-WESTINGHOUSE AUTOMOTIVE AIR BRAKE COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (39 EMPLOYEES IN THE UNIT).

14238-67-R: BARRIE TYPOGRAPHICAL UNION LOCAL 873 (I.T.U.) (APPLICANT)
V. DAILY PACKET AND TIMES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORILLIA ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14364-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL-CIO-CLC (APPLICANT) V. BOARD OF TRUSTEES OF THE HARROW DISTRICT HIGH SCHOOL, HARROW, ONTARIO (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (3 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 168).

14399-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. ONORIO & COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

14405-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SUDBURY HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE CITY OF SUDBURY AND IN THE TOWNSHIP OF GARSON, SAVE AND EXCEPT CHIEF CUSTODIANS, PERSONS ABOVE THE RANK OF CHIEF CUSTODIAN, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (63 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14437-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597 (APPLICANT) V. THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

14448-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. MUNICIPAL SAND & GRAVEL CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF THE TOWNSHIP OF KINGSTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (11 EMPLOYEES IN THE UNIT).

14449-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) V. KINGSTON DUNBRIK (1963) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MORRISBURG, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(5 EMPLOYEES IN THE UNIT).

14452-68-R: UNITED-CARR EMPLOYEES' ASSOCIATION (APPLICANT) V. UNITED-CARR CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE STAFF, SALES STAFF, NEW PRODUCT DEVELOPMENT STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

14453-68-R: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (AFFILIATED AFL, CIO, CLC)
(APPLICANT) V. BRACEBRIDGE STEEL FABRICATING CO. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRACEBRIDGE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL EMPLOYEES, SECURITY GUARDS AND EMPLOYEES ENGAGED IN FIELD ERECTION, INSTALLATION OR CONSTRUCTION WORK." (22 EMPLOYEES IN THE UNIT).

14461-68-R: HOTEL AND RESTAURANT EMPLOYEE'S AND BARTENDERS INTERNATIONAL UNION, LOCAL 756, A.F.L., C.I.O., C.L.C., ST. CATHARINES, ONTARIO (APPLICANT)
V. REEB PUBLIC HOUSE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE REEB PUBLIC HOUSE IN HUMBERSTONE TOWNSHIP, SAVE AND EXCEPT OWNERS." (4 EMPLOYEES IN THE UNIT).

14467-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. RIGMILL INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND EMPLOYEES NOW COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (11 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14470-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) V. BENCO TELEVISION ASSOCIATES, A DIVISION OF REDIFON (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (74 EMPLOYEES IN THE UNIT).

14471-68-R: LOCAL 572 - UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DALTON ENGINEERING & CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND IN THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND IN THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14474-68-R: CENTRAL ONTARIO DISTRICT COUNCIL UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ANDRE CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA, AND THE TOWNSHIPS OF RAMA, MARA AND HORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14492-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HANK BROUWER CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

14496-68-R: NURSES' ASSOCIATION HUNTSVILLE DISTRICT MEMORIAL HOSPITAL (APPLICANT) V. HUNTSVILLE DISTRICT MEMORIAL HOSPITAL (RESPONDENT).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT HUNTSVILLE ENGAGED IN NURSING CARE AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES, SAVE AND EXCEPT FLOOR MANAGER, HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE OR FLOOR MANAGER AND THOSE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT AT HUNTSVILLE ENGAGED IN NURSING CARE AND REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT FLOOR MANAGER, HEAD NURSES, PERSONS ABOVE THE RANK OF FLOOR MANAGER AND HEAD NURSE." (9 EMPLOYEES IN THE UNIT).

14497-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. WOLFE TRANSMISSION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (57 EMPLOYEES IN THE UNIT).

14498-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. WINCHESTER DISTRICT MEMORIAL HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT AT WINCHESTER, SAVE AND EXCEPT THE CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

14499-68-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 210, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. THE PUBLIC SCHOOL BOARD OF THE TOWNSHIP SCHOOL AREA OF HARROW AND COLCHESTER SOUTH TOWNSHIP (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14502-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS LOCAL UNION 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COLONY MERCURY SALES LIMITED (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT SALES MANAGERS, PERSONS ABOVE THE RANK OF SALES MANAGER, AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14505-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. WEST END CHRYSLER DODGE LIMITED (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT SALES MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT SALES MANAGER, AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14513-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. H. J. FOSTER MOTORS LIMITED (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SALES MANAGERS AND PERSONS ABOVE THE RANK OF SALES MANAGER." (8 EMPLOYEES IN THE UNIT).

14514-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MID-CLAIR DODGE CHRYSLER LTD. (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SALES MANAGERS, AND PERSONS ABOVE THE RANK OF SALES MANAGER." (17 EMPLOYEES IN THE UNIT).

14524-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND IN THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

14525-68-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 268 A.F. OF L. C.I.U. C.L.C. (APPLICANT) V. THE YOUNG MEN'S CHRISTIAN ASSOCIATION OF FORT WILLIAM (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, ADMINISTRATIVE AND OFFICE STAFF, POOL ATTENDANT, INSTRUCTORS, GROUP LEADERS, COUNSELLORS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (9 EMPLOYEES IN THE UNIT).

14526-68-R: LOCAL UNION 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. HESPELER HYDRO-ELECTRIC COMMISSION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

14528-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. HOLLINN CONSTRUCTION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

(HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 174).

14532-68-R: MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. FRITO-LAY INC. (RESPONDENT).

UNIT: "ALL DRIVER SALESMEN OF THE RESPONDENT EMPLOYED IN THE TOWNSHIP OF RALEIGH, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

14533-68-R: MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. FRITO-LAY INC. (RESPONDENT).

UNIT: "ALL DRIVER SALESMEN OF THE RESPONDENT EMPLOYED AT WINDSOR, SAVE AND EXCEPT ROUTE SUPERVISORS, PERSONS ABOVE THE RANK OF ROUTE SUPERVISORS, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

14534-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. FORENTA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINCARDINE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (14 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 176).

14541-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. MACDONALD ENGINEERING COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

14548-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.
TOWNSHIP SCHOOL AREA OF NEELON-GARSON & CONISTON (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SCHOOL ADMINISTRATOR, OFFICE STAFF, AND PROFESSIONAL TEACHING STAFF." (9 EMPLOYEES IN THE UNIT).

14551-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ,
GRIMSBY CAR REFINISHING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GRIMSBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

14552-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V.
NADECO LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14569-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506
(APPLICANT) V. LIDO PLASTERING CO. LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 180).

14585-68-R: LOCAL UNION NO. 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. HARLOCK-SCHULTZ ELECTRIC LTD.
(RESPONDENT).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

14592-68-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIVISION NO. 1, N.C.C.L.
(APPLICANT) V. PILLAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL TRUCK DRIVERS, LABOURERS, CARPENTERS AND CARPENTERS' APPRENTICES WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY CITY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THAT THE PERSON CLASSIFIED AS A "LOADER OPERATOR" IS AN EMPLOYEE IN THE BARGAINING UNIT.

14601-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. H.J. O'CONNELL LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14605-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14610-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. HARB DEVELOPMENT LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 181).

14611-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ROBERT SINKE (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14619-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) V. GRENIER CONSTRUCTION INC. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14635-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. O'NEIL STEEL (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

14413-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. LEWIS-SHEPARD (CANADA) LIMITED (RESPONDENT) V. CANADIAN STEELWORKERS UNION (LEWIS-SHEPARD DIVISION) (INTERVENER #1) V. UNITED STEELWORKERS OF AMERICA (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND SECURITY GUARDS." (79 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		79
NUMBER OF PERSONS WHO CAST BALLOTS	77	
NUMBER OF SPOILED BALLOTS	2	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	48	
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER #1 CANADIAN STEELWORKERS UNION (LEWIS-SHEPARD DIVISION)	27	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

14261-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. ONTARIO PLASTERING CONTRACTORS (RESPONDENT) V. OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF U.S. & CANADA, LOCAL 117 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN A TWENTY-FIVE MILE RADIUS FROM THE TORONTO CITY HALL, AND INCLUDING THE TOWN OF NEWMARKET, AND AN AREA BOUNDED ON THE EAST BY THE WESTERLY LIMITS OF THE THIRD CONCESSION ROAD, RUNNING NORTH AND SOUTH, EAST OF YONGE STREET; ON THE NORTH BY THE SOUTHERLY LIMITS OF THE FIRST CONCESSION ROAD, RUNNING EAST AND WEST, NORTH OF NEWMARKET; ON THE WEST BY THE EASTERLY LIMITS OF THE FIRST CONCESSION ROAD RUNNING NORTH AND SOUTH, WEST OF YONGE STREET, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

7

NUMBER OF PERSONS WHO CAST BALLOTS

7

NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT

5

NUMBER OF BALLOTS MARKED AGAINST
APPLICANT

2

APPLICATIONS FOR CERTIFICATION DISMISSED DURING MAY

NO VOTE CONDUCTED

14153-67-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION No. 10
(APPLICANT) V. RONALDS-FEDERATED LIMITED (RESPONDENT) (38 EMPLOYEES).

14233-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796
(APPLICANT) V. GEORGE BROWN COLLEGE OF APPLIED ARTS AND TECHNOLOGY
(RESPONDENT). (4 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 165).

14255-67-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION,
LOCAL 81 (APPLICANT) V. LAKEHEAD UNIVERSITY (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS). (111 EMPLOYEES).

14401-68-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION,
AFL-CIO, CLC (APPLICANT) V. MEDUSA PRODUCTS COMPANY OF CANADA LIMITED
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (6 EMPLOYEES).

14433-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796
(APPLICANT) V. THE ROYAL BANK OF CANADA (RESPONDENT). (6 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 169).

14451-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V.
CENTENNIAL COLLEGE OF APPLIED ARTS AND TECHNOLOGY (RESPONDENT).
(4 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 170).

14476-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA
(UE) (APPLICANT) V. THE CORPORATION OF THE CITY OF WELLAND (RESPONDENT)
V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1115 (INTERVENER).
(9 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 171).

14482-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) v. R & R PRE-CAST ERECTORS LIMITED (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER). (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 172).

14495-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. DON HOWSON CHEVROLET OLDSMOBILE LTD. (RESPONDENT). (68 EMPLOYEES).

14501-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. PADDY SHANAHAN FORD SALES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (14 EMPLOYEES).

14503-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. WOODLAND MOTORS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (11 EMPLOYEES).

14504-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. WILLISON, PAUL LTD. (RESPONDENT). (9 EMPLOYEES).

14507-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. DON LITTLE FORD SALES LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (21 EMPLOYEES).

14509-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS LOCAL UNION 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. HOGAN PONTIAC BUICK LTD. (RESPONDENT). (17 EMPLOYEES).

14511-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. DEAN MYERS CHEVROLET-OLDSMOBILE LTD. (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (16 EMPLOYEES).

14516-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. EGLINTON CALEDONIA MOTORS LIMITED (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS). (9 EMPLOYEES).

14517-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. HOWARD ELLIOTT MOTORS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (11 EMPLOYEES).

14518-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DODGE ONTARIO CAR COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (10 EMPLOYEES).

14520-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BOB BANNERMAN MOTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (9 EMPLOYEES).

14537-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS (APPLICANT) V. MOORE-HAWLEY MOTORS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (13 EMPLOYEES).

14538-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE PORT CREDIT MOTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (9 EMPLOYEES).

14547-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 837 (APPLICANT) V. VENZON PLASTERING LIMITED (RESPONDENT). (6 EMPLOYEES).

14565-68-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V. RYERSON POLYTECHNICAL INSTITUTE, PRINTING PRODUCTION DEPARTMENT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14627-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) V. BEER PRECAST CONCRETE LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER). (43 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 183).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

14295-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527
(APPLICANT) V. SECANT CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTER'S LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	2

14306-67-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION No. 199 N.C.C.L. (INTERVENER).

- AND -

14341-67-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 199, N.C.C.L. (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT).

THE ABOVE APPLICATIONS ARE CONSOLIDATED.

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING IN AND OUT OF THE TOWNSHIP OF PUSLINCH, SAVE AND EXCEPT FOREMEN AND DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (64 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	48
NUMBER OF PERSONS WHO CAST BALLOTS	46
NUMBER OF SPOILED BALLOTS	32
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT GENERAL TRUCK DRIVERS	
UNION LOCAL 879 AFFILIATED WITH THE	
INTERNATIONAL BROTHERHOOD OF TEAMSTERS,	
CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF	
AMERICA	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
APPLICANT CANADIAN TRANSPORTATION	
WORKERS' UNION No. 199, N.C.C.L.	4

14307-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. VAN DRESSER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (65 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		58
NUMBER OF PERSONS WHO CAST BALLOTS	58	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	28	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	30	

14316-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. JERRY'S CANTEEN SERVICE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		5
NUMBER OF PERSONS WHO CAST BALLOTS	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	5	

14432-68-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT) V. C. M. SCOTT FLUID POWER LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (14 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		13
NUMBER OF PERSONS WHO CAST BALLOTS	13	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	13	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING MAY

14466-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. SCHWENGER CONSTRUCTION LIMITED (RESPONDENT). (2 EMPLOYEES).

14485-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FISHER GAUGE
WORKS LIMITED (RESPONDENT). (49 EMPLOYEES).

14493-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LEWIS-
SHEPARD (CANADA) LIMITED (RESPONDENT). (82 EMPLOYEES).

14522-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF
AMERICA (APPLICANT) V. AQUATIVITY LTD. (RESPONDENT). (NO EMPLOYEES).

14523-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) V. INSPIRATION LIMITED (RESPONDENT). (12 EMPLOYEES).

14535-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) V. J. PYNOD & SONS (GENERAL CONTRACTORS) (RESPONDENT).
(9 EMPLOYEES).

14549-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS, LOCAL UNION 721, 1604 BLOOR STREET WEST,
TORONTO 9, ONTARIO (APPLICANT) V. BEER PRE-CAST CONCRETE LIMITED,
110 MANVILLE ROAD (112 MANVILLE RD.), SCARBOROUGH, ONTARIO (RESPONDENT)
V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506
(INTERVENER). (49 EMPLOYEES).

14590-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE)
(APPLICANT) V. FABRICON MFG. LTD. (RESPONDENT). (38 EMPLOYEES).

14624-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 940
(APPLICANT) V. LAKE OF THE WOODS DISTRICT HOSPITAL, KENORA, ONTARIO
(RESPONDENT). (9 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
OF DURING MAY

14281-67-R: GRAHAM TRANSPORT LIMITED (APPLICANT) V. GENERAL TRUCK DRIVERS'
UNION LOCAL NUMBER 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS). (6 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 184).

14284-67-R: EMPLOYEES OF CANADIAN H. W. GOSSARD CO. PORT PERRY ONT.
(APPLICANT) V. INTERNATIONAL LADIES GARMENT WORKERS UNION (RESPONDENT)
V. CANADIAN H. W. GOSSARD CO. LTD. (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF CANADIAN H. W. GOSSARD CO. LTD. AT PORT PERRY,
SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN
AND FORELADY, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR
NOT MORE THAN 24 HOURS PER WEEK." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	23
NUMBER OF PERSONS WHO CAST BALLOTS	22
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	21

14580-68-R: SCARBOROUGH PUBLIC LIBRARY BOARD (APPLICANT) V. CANADIAN
UNION OF PUBLIC EMPLOYEES (RESPONDENT). (NO EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 196).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING MAY

14559-68-U: H. J. JONES & SONS LIMITED (APPLICANT) V. ROBERT FISCHER,
DANIEL JAMES MACRAE (RESPONDENTS). (WITHDRAWN).

14563-68-U: NATIONAL AUTO RADIATOR MANUFACTURING COMPANY LIMITED
(APPLICANT) V. JOHN GRANT, VINCENT HAMELIN, BERNARD DEBLOIS, MICHAEL,
LEDINGHAM AND JON VARNEY (RESPONDENTS). (DISMISSED).

14589-68-U: NATIONAL AUTO RADIATOR MANUFACTURING COMPANY LIMITED
(APPLICANT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, AFL-CIO (RESPONDENT).
(WITHDRAWN).

14603-68-U: ELLIS DON LIMITED (APPLICANT) V. JULIUS HALSEMA, LOUIS
GRAHAM, DAVID MCINTYRE, JOSEF LUZAK, JOAQUIM FERREIRA, GERARDUS
GRIMMINCK, JOHN LAWRENCE, ARNOLD MARSMAN, JOHN MINDERLEIN, DOUGLAS
WEBB, PATRICK FAGAN, GARNET LUCAS, HAROLD QUIGG, JOSE TEODORO, PAUL
GORMIER, PETER VANLANEN, GARY OVERHOLT, DONALD SLAUGHTER, EDWARD
CLASSEN, HERBERT MCGAW, KENNETH GIBSON, IVAN VERTIKA, ROBERT MAGINNIS,
LAWRENCE HARTMAN, JOHN SOKOLOWSKY, WILLIAM BANNERMAN, MATHIAS BODINGER,
LLOYD JAMEISON, LORNE FRASER, FREDERICK BOWERMAN, DAVID COTTLE, BORGE
NIELSEN, JOHN MAYOS, WILLIAM MUELEMAN, GORDON YAKE, STEWARD SIMBERT,
ALAN ZACHER, DONALD ROBBINS, VICTOR SZYMANSKI, WILLARD BRYAN, WILLIAM
ROSE, JOHN ELLIOTT, EARLING LARSEN AND MARIEN VANARENTHALS (RESPONDENTS).
(WITHDRAWN).

14604-68-U: ELLIS DON LIMITED (APPLICANT) V. RICHARD BIRCHALL, ROBERT FRANK, IELIKS BYTOW, DAVID LAUR, MICHEL DIGUGLIELMO, GUNTHER MACKAY, JOHN WIEGMAN, ROGER HARMSWORTH, GEORGE NIKON, HELMUT ONDERKA, ARVIDS BUMEISTER, PETER CATTERSON, ROY PUDMER, GERARD KLEUSKEMS, WILLIAM PEARCE, ANDREW LAMB, CHARLES OAKLEY, WAYNE COLLINS, DOUGLAS THOMSON, HECTOR THOMSON, JOHN HEIDMAN, RALPH BAILEY, JAMES PIERCE, JURGEN SCHUMACHER, MATTHEW HARBISON, PETER VEEL, ALFRED MARSON, HAROLD LEITCH, ALFONS VANDERJUEGD, GARFIELD DUKESHIRE, TED TESIORISKI, HENRY PIGNAL, JULIAN TUTZER, CHRISTIANUS KOOLEN, GEORGE ZIELDAUER, PHILLIP POPOV, CAMERON SIMMON, PETER RUEHL, HELMUT REITKNECHT, EDWARD SQUIRE, SIEGFRIED NIMZ, GEORGE BROWN, CARL LEADER, FREDERICK MAYER, LOUIS CRUSE, JOHN SIMMONS, OLIVER HOUGHTON, GORDON HOLCOMBE, EDWIN MAYER, EDWIN ALLEN, DAVID ARMITAGE, THOMAS BROOKS, FRANKLIN KIEFER, ADOLPH KIEFER, ANRIAN VEREYKEN, ALBERT REID, PERCY WHITE, FREDERICK WRIGHT, JOHN BAUER, LESLIE MCCONNELL, GEOFFREY SAVAGE AND ERWIN LICHNER (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 197).

14607-68-U: CANADIAN PITTSBURGH INDUSTRIES LIMITED (APPLICANT) V. LEONARD JOHN BUCK, GEORGE BROOKE, GEORGE JOHNSTONE, JOHN RAYMOND KNOX, ALFRED PAUL MARTIN, ARTHUR MORTON, RONALD REVELL, THOMAS FRED SCOTT AND ALBERT VALENTINO (RESPONDENTS). (WITHDRAWN).

14608-68-U: CANADIAN PITTSBURGH INDUSTRIES LIMITED (APPLICANT) V. INTERNATIONAL CHEMICAL WORKERS UNION, LOCAL 172 (RESPONDENT). (WITHDRAWN).

14620-68-U: CANADIAN PITTSBURGH INDUSTRIES LIMITED (APPLICANT) V. JOSEPH COOPER, BURTON DARREL DAGAN, WILLIAM FOUNTAIN, KEITH FREEBORN, GORDON HOGG, RICHARD KEIM, SIEGRID KOHL, HAROLD ROY MACAULAY, GARY MANDERS, VERDON BYRON O'BRIEN, KEIZO THOMAS OTANI, EDWARD ROSE, WILLIAM THOMPSON, RICHARD JOHN WILSON AND DANIEL WOLNY (RESPONDENTS). (WITHDRAWN).

14622-68-U: CANADIAN PITTSBURGH INDUSTRIES LIMITED (APPLICANT) V. EUGENE BALAZS, WILLIAM ORVIL BRYANT, JAMES GREGORY CAUGHLIN, GEORGE CROZIER, CARMAN DAWDY, LARRY DOXTUTOR, CUNNINGHAM FRASER, JOHN WELDON GRIDLEY, JOSEPH HARDING, HERBERT HACT, CHARLES BYRON HOLMES, CLARENCE JEAN, LEONARD OSWALD JONES, MICHAEL KATZENMAYER, WILLIAM LEWIS, LESLIE MARTIN, RONALD MCKINNON, EDWARD NADOLSKI, FREDERICK JOHN NEWFIELD, FRANK NOVAKOWSKI, ERNEST EARLE OAKLEY, BRIAN WILLIAM PARKINSEN, FREDERICK PEARCE, STEVEN PISARA, FRANK RUSSO, LEONARD SHOEBOBOTTOM AND GARRY GEORGE WILLIAMS (RESPONDENTS). (WITHDRAWN).

14643-68-U: THE ALGOMA STEEL CORPORATION, LIMITED (APPLICANT) V. JAMES ARDITO ET AL (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 199).

APPLICATIONS FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

MAY

14554-68-U: BRICKLAYERS' AND MASONS' INTERNATIONAL UNION NO 5
(APPLICANT) V. ELLIS DON LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 202).

14572-68-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
LOCAL 1946 (APPLICANT) V. ELLIS-DON LIMITED GENERAL CONTRACTORS
(RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO PROSECUTE DISPOSED OF DURING MAY

14268-67-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA,
AFL-CIO-CLC (APPLICANT) V. DAVIDSON RUBBER COMPANY INCORPORATED
(RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 206).

14465-68-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V.
SCARBOROUGH CENTENARY HOSPITAL (RESPONDENT). (WITHDRAWN).

14494-68-U: MEDITERRANEAN CONSTRUCTION COMPANY (APPLICANT) V. INTER-
NATIONAL HOD CARRIERS' BUILDING AND COMMON LABOURERS' UNION OF AMERICA,
LOCAL 506 (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO PROSECUTE (HOSPITAL ARBITRATION ACT) DISPOSED

OF DURING MAY

3-68-PH: CANADIAN UNION OF PUBLIC EMPLOYEES' C.L.C., LOCAL 786 (APPLICANT)
V. ST. JOSEPH'S HOSPITAL, HAMILTON (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 207).

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT REQUESTED BY TRADE UNION

MEMBERS) DISPOSED OF DURING MAY

14317-67-M: MRS. LILA I. DAVIS MRS. DORIS ENGLISH (COMPLAINANTS) V.
NORTHERN ELECTRIC EMPLOYEES ASSOCIATION. UNIT #5. MR. TOM ELLISON,
MR. BILL POWELL. DISTRICT REPRESENTATIVES (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 209).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

MAY

14220-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. GENERAL
FREEZER LIMITED (RESPONDENT). (WITHDRAWN).

14287-67-U: ERNIE R. LONEY (COMPLAINANT) v. ODEON THEATRES (CANADA) LTD. AND INTERNATIONAL ALLIANCE OF THEATRICAL STAGE EMPLOYEES AND MOVING PICTURE MACHINE OPERATORS OF THE UNITED STATES AND CANADA, PETERBOROUGH LOCAL No. 432 (RESPONDENTS). (WITHDRAWN).

14387-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) v. COLUMBUS MCKINNON LIMITED (RESPONDENT). (WITHDRAWN).

14388-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (COMPLAINANT) v. COLUMBUS MCKINNON LIMITED (RESPONDENT). (WITHDRAWN).

14393-68-U: THE INTERNATIONAL BEVERAGE DISPENSERS AND BARTENDERS UNION, LOCAL 280 (COMPLAINANT) v. HAROLD GROSS LIMITED (OTHERWISE KNOWN AS THE TOWN TAVERN) AND THE IMPERIAL LIFE ASSURANCE COMPANY OF CANADA (RESPONDENTS). (WITHDRAWN).

14472-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. DOMESTIC TANK & EQUIPMENT LTD. (RESPONDENT). (WITHDRAWN).

14473-68-U: RETAIL CLERKS INTERNATIONAL ASSOCIATION (COMPLAINANT) v. ZEHR'S MARKETS LIMITED (RESPONDENT). (WITHDRAWN).

14481-68-U: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA-A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) v. KOKOTOW LUMBER LIMITED (KENOGAMI SAWMILL) (RESPONDENT). (WITHDRAWN).

14483-68-U: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 (COMPLAINANT) v. HERITAGE FORD SALES LTD. (RESPONDENT). (DISMISSED).

14484-68-U: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 (COMPLAINANT) v. H. J. FOSTER MOTORS LTD. (RESPONDENT). (WITHDRAWN).

14539-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) v. CRANE CANADA LIMITED (RESPONDENT). (WITHDRAWN).

14564-68-U: LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (COMPLAINANT) v. BELL & HOWELL CANADA LIMITED (RESPONDENT). (WITHDRAWN).

14570-68-U: JAMES SPEIRS (COMPLAINANT) v. F. W. MURRAY (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 210).

14571-68-U: JAMES SPEIRS (COMPLAINANT) v. A. MAIN (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 212).

14633-68-U: R. LIVINGSTONE (COMPLAINANT) v. CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

14536-68-M: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCALS 338 - 351., AND THE CANADIAN LINEN SUPPLY (ONTARIO) LIMITED (APPLICANTS). (GRANTED).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING MAY

14301-67-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. BRANTFORD TRAILER AND BODY LIMITED (RESPONDENT). (GRANTED).

REQUEST FOR CLARIFICATION OF BARGAINING UNIT

13076-67-R: NURSES' ASSOCIATION PEEL MEMORIAL HOSPITAL (APPLICANT) V. PEEL MEMORIAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INT'L. UNION, LOCAL 204 (INTERVENER). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 216).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

14013-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. INDUSTRIAL-MINE INSTALLATIONS LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 217).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 79(2)

13761-67-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000 (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 225).

14343-67-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CLC) AND ITS LOCAL 673 (APPLICANT) V. DOUGLAS AIRCRAFT COMPANY OF CANADA LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 226).

INDEXED ENDORSEMENTS - CERTIFICATION

13860-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V.
HI WAY MARKET LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
R. W. TEAGLE AND E. BOYER.

APPEARANCES AT HEARING: IAN SCOTT, CLIFFORD EVANS, RONALD PARKS FOR
THE APPLICANT; F. G. HAMILTON, HAROLD L. PFEFFER, JOHN MIHM FOR THE
RESPONDENT; JAMES G. MCGIBBON, DOUGLAS BOWMAN, BERNARD SNYDERS FOR THE
GROUP OF EMPLOYEES.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
R. W. TEAGLE: MAY 21, 1968.

1. AT THE HEARING ON JANUARY 2ND, 1968, THE RESPONDENT, BY WAY OF A
PRELIMINARY MOTION, REQUESTED THE BOARD TO DISMISS THIS APPLICATION ON
THE BASIS THAT IT WAS UNTIMELY AND, AS WELL, TO IMPOSE A BAR AGAINST THE
APPLICANT PURSUANT TO THE PROVISIONS OF SECTION 77(2)(J) OF THE LABOUR
RELATIONS ACT.

2. THE FACTS IN THIS RESPECT ARE THAT THE APPLICANT HAD MADE A
PREVIOUS APPLICATION FOR CERTIFICATION DATED SEPTEMBER 15TH, 1967 COVER-
ING THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED IN THE INSTANT APPLI-
CATION AND A HEARING WAS HELD AT THE BOARD IN THE FORMER APPLICATION ON
OCTOBER 3RD, 1967. IT THEN APPEARED THAT THE APPLICANT HAD SUFFICIENT
EVIDENCE OF MEMBERSHIP TO ENTITLE IT TO A REPRESENTATION VOTE AND AS THERE
WAS A DISPUTE AS TO THE INCLUSION IN THE UNIT OF CERTAIN EMPLOYEES, AN
EXAMINER WAS APPOINTED. A PETITION IN OPPOSITION TO THAT APPLICATION WAS
ALSO FILED WHICH WAS ONLY IDENTIFIED AT THE HEARING ON OCTOBER 3RD. THE
EXAMINER, PURSUANT TO THE BOARD'S DIRECTION, CONDUCTED A HEARING IN
KITCHENER ON OCTOBER 23RD AT WHICH NAMES OF EMPLOYEES APPEARING ON THE
RESPONDENTS' SCHEDULES WERE REVEALED TO THE APPLICANT. THIS MEETING WAS
ADJOURNED TO NOVEMBER 7TH. ON NOVEMBER 3RD, AT THE SAME TIME AS MAKING
THE PRESENT APPLICATION, THE APPLICANT REQUESTED LEAVE OF THE BOARD TO
WITHDRAW ITS APPLICATION DATED SEPTEMBER 15TH, 1967. THE RESPONDENT
OBJECTED TO THIS REQUEST AND SUBMITTED IN ANY EVENT THAT THE BOARD SHOULD
IMPOSE A SIX MONTHS BAR TO ANY FURTHER APPLICATION. BY ITS DECISION
DATED DECEMBER 14TH, 1967 THE BOARD GRANTED LEAVE TO THE APPLICANT TO
WITHDRAW THE APPLICATION DATED SEPTEMBER 15TH, 1967 WITHOUT IMPOSING A
BAR TO ANY FURTHER APPLICATION. THE RESPONDENT SUBMITS THAT IN THE
CIRCUMSTANCES OUTLINED ABOVE, THE INSTANT APPLICATION IS VEXATIOUS AND
FRIVOLOUS, THE APPLICANT HAVING OBTAINED INFORMATION FROM THE RESPONDENT
THROUGH THE BOARD'S OFFICES WHICH IT THEN USED TO ATTEMPT TO AVOID A
VOTE.

3. THE APPLICANT SUBMITTED THAT IN THE FIRST APPLICATION THERE WAS
A SUBSTANTIAL DISPUTE BETWEEN THE PARTIES ON THE LIST OF EMPLOYEES FILED
BY THE RESPONDENT AND ON THE DUTIES AND RESPONSIBILITIES OF CERTAIN EM-
PLOYEES, HENCE, AN EXAMINER HAD TO BE APPOINTED. AFTER A PRELIMINARY
MEETING WITH THE EXAMINER ON OCTOBER 23RD THE APPLICANT WAS CONCERNED WITH

THE DELAY AND PROPERLY DECIDED THAT AN APPLICATION COULD BE MADE THAT WOULD AVOID THE DIFFICULTIES WITH THE EMPLOYEES. FOR THIS REASON A NEW APPLICATION WAS FILED ON NOVEMBER 3RD AT THE SAME TIME A REQUEST TO WITHDRAW THE OTHER APPLICATION WAS MADE. NO VOTE HAD BEEN ORDERED BY THE BOARD IN THE FIRST APPLICATION AND THEREFORE THE PRINCIPLES IN THE MATHIAS V. OULLETTE CASE, 1 CCH 18,026; C.L.S. 76-485; DID NOT APPLY. THERE ARE NO SPECIAL CIRCUMSTANCES IN THIS CASE FOR WHICH THE BOARD TO DEViate FROM ITS POLICY OF IMPOSING A BAR ONLY WHERE AN APPLICANT HAS GONE TO A VOTE AND LOST OR WHERE IT HAS REFUSED TO ACCEPT THE RESULT OF A VOTE.

4. IT WAS THE UNANIMOUS OPINION OF THE BOARD THAT THE APPLICATION WAS TIMELY AND THE BOARD SO RULED AT THE HEARING AND DISMISSED THE MOTION OF THE RESPONDENT IN THIS REGARD. IT IS CLEAR THAT THE PRINCIPLES SET OUT IN THE MATHIAS AND OULLETTE CASE [SUPRA] ARE RELEVANT ONLY TO THE SITUATION THEREIN DESCRIBED AND THERE ARE NO SPECIAL CIRCUMSTANCES IN THE INSTANT CASE WHICH WOULD PERSUADE THE BOARD TO DEVIATE FROM ITS PAST PRACTICE AS TO THE IMPOSITION OF A BAR PURSUANT TO SECTION 77(2)(J) OF THE ACT. DESPITE THE CONTENTION OF THE RESPONDENT THAT IN THE PROCEEDINGS CERTAIN INFORMATION WAS REVEALED TO THE APPLICANT, THE FACT THAT AN APPLICANT REQUESTS TO WITHDRAW ITS APPLICATION FOLLOWING AN EXAMINER'S HEARING DOES NOT SUGGEST ANY IMPROPRIETY BY THE APPLICANT OR PREJUDICE TO THE RESPONDENT. IT HAS PREVIOUSLY BEEN SAID THAT SECTION 77(2)(J) OF THE ACT IS NOT PUNATIVE IN NATURE AND AS WELL THE INTEREST OF THE EMPLOYEES MUST BE TAKEN INTO CONSIDERATION BY THE BOARD. FOR REFERENCE SEE ALSO THE GENERAL FREEZER CASE, 63 CLLC 1219; C.L.S. 76-971.

5. FOLLOWING ITS DECISION DATED FEBRUARY 14TH, 1968, THE BOARD INQUIRED INTO THE ORIGATION AND CIRCULATION OF A PETITION FILED IN OPPOSITION TO THIS APPLICATION BY CERTAIN EMPLOYEES IN THE BARGAINING UNIT. THE BOARD ALSO CONSIDERED THE EVIDENCE ADDUCED AT THE FIRST HEARING IN THIS CASE IN SUPPORT OF THE CHARGES MADE BY THE APPLICANT WITH RESPECT TO THE PETITION.

6. DOUGLAS BOWMAN, SHIPPER-RECEIVER, TESTIFIED THAT HE CAUSED THE PETITION TO BE DRAWN UP BY A SOLICITOR WHO HE HAD ENGAGED ON BEHALF OF THOSE EMPLOYEES CONCERNED, FOR THE PURPOSE OF THE PETITION. THE SAME SOLICITOR HAD ALSO DRAWN UP THE PETITION WHICH WAS FILED IN THE PREVIOUS APPLICATION. THE LEGAL COSTS INVOLVED IN THIS MATTER WERE TO BE MET BY CONTRIBUTIONS OF THE EMPLOYEES WHICH BERNARD SNYDERS HAD COLLECTED FROM THEM AT THE TIME OF THE FIRST APPLICATION. THERE WAS NO MANAGEMENT ASSISTANCE OFFERED OR GIVEN IN THIS RESPECT. THE CIRCUMSTANCES SURROUNDING THE ORIGATION AND CIRCULATION OF THE PETITION FILED IN THE FIRST APPLICATION WERE NOT DEALT WITH BY THE BOARD IN THAT APPLICATION. BOWMAN TESTIFIED REGARDING THAT PETITION AND SAID THAT HE HAD TAKEN 2 1/2 HOURS OFF WORK IN ORDER TO ATTEND AT THE SOLICITOR'S OFFICE TO HAVE THE PETITION DRAWN. HE WAS NOT PAID FOR THE TIME LOST AND HAD REPORTED TO HIS DEPARTMENT HEAD THAT HE WOULD BE LATE FOR WORK. HE AND SNYDERS CIRCULATED THIS PETITION

AND MOST OF THE SIGNATURES WERE OBTAINED IN THE STORE DURING WORKING HOURS BUT THE EMPLOYEES CAME TO HIM IN THE RECEIVING AREA TO SIGN THE DOCUMENT WHILE ON BREAKS OR AT LUNCH TIME. HE SAID THAT THE SHIPPING AND RECEIVING AREA, WHICH WAS HIS WORK STATION, ALSO INCLUDED A PLACE FOR DAMAGED GOODS, GARBAGE DISPOSAL, BOTTLE RETURNS, AND IS WHERE THE EMPLOYEES ARE ISSUED WORK JACKETS AND COATS. THE AREA HAS A GREAT DEAL OF TRAFFIC THROUGH IT DURING WORKING HOURS IN ANY EVENT. BOWMAN ASSERTED THAT THE MANAGER DID NOT SEE ANYONE TAKING UP THAT PETITION.

7. THE PETITION IN THE PRESENT APPLICATION WAS ALSO PREPARED AT THE SOLICITOR'S OFFICE WHERE BOWMAN ATTENDED AFTER WORK ON DECEMBER 19TH WHICH WAS THE DAY HE SAW THE NOTICE OF THE APPLICATION FOR CERTIFICATION ON THE BULLETIN BOARD. HE THEN WENT TO SNYDERS' HOUSE AND BOTH OF THEM RETURNED TO THE RESPONDENT'S PREMISES THAT EVENING WITH THE PETITION. THE STORE WAS THEN OPEN FOR BUSINESS. THEY PARTED COMPANY AND BOWMAN WENT UPSTAIRS TO THE GENERAL OFFICES WHERE IN THE HALLWAY HE MET MR. PFEFFER, THE STORE MANAGER, FROM WHOM HE REQUESTED THE USE OF THE EMPLOYEE NAME CARD BOX. PFEFFER THEN OBTAINED THIS BOX FROM THE SWITCHBOARD AND GAVE IT TO BOWMAN BUT DID NOT ASK HIM THE REASON HE WANTED IT NOR DID BOWMAN SAY ANYTHING TO HIM ABOUT IT. HE THEN ASKED PFEFFER IF HE COULD USE A VACANT OFFICE AND AFTER GETTING HIS PERMISSION, WENT INTO A PRIVATE OFFICE WHERE HE REMAINED FOR ABOUT 1 1/2 HOURS AND TOOK DOWN SOME INFORMATION FROM THE FILE CARDS. HE SAID THAT HE HAD USED THE BOX BEFORE IN ORDER TO OBTAIN PART TIME HELP OR FOR BOTTLE RETURNS AND HAD NEVER BEEN REFUSED ITS USE. HE INTENDED TO USE THE INFORMATION HE OBTAINED FROM THE CARDS BUT DID NOT IN FACT DO SO. WHILE HE WAS IN THE OFFICE SNYDERS CAME TO THE OFFICE AND ASKED HIM WHAT HE WAS DOING BUT HE HAD MERELY INDICATED THAT HE WAS USING THE FILE CARDS. HE THOUGHT THAT SNYDERS WAS CIRCULATING THE PETITION THAT EVENING. BOWMAN DID NOT SEE PFEFFER AGAIN THAT EVENING AND AFTER LEAVING THE BOX AT THE SWITCHBOARD HE WENT DOWNSTAIRS, MET SNYDERS AND LEFT THE STORE. HE DID NOT OBTAIN ANY SIGNATURES ON THE PETITION AS SNYDERS HAD TAKEN IT INTO HIS OWN HANDS. HE COULD NOT SAY WHETHER HIS ACTIONS HAD BEEN OBSERVED THAT EVENING. HE ASSERTED THAT HE HAD NOT DISCUSSED THE PETITION WITH ANYONE FROM MANAGEMENT AND THAT IT HAD BEEN PREPARED ENTIRELY AT HIS OWN VOLITION. AFTER SNYDERS OBTAINED THE SIGNATURES HE GAVE THE PETITION BACK TO BOWMAN WHO ALSO SIGNED IT AND MAILED IT TO THE BOARD ON THE EVENING OF THE TERMINAL DATE.

8. BERNARD SNYDERS, A JANITOR IN THE EMPLOY OF THE RESPONDENT, TESTIFIED THAT WITH RESPECT TO THE PETITION IN THE FIRST APPLICATION, BOWMAN HAD OBTAINED MOST OF THE SIGNATURES SOME OF WHICH WERE OBTAINED OFF THE PREMISES OF THE RESPONDENT AND NOT DURING WORKING HOURS. HE HAD ASSISTED IN THAT PETITION BY GETTING SIGNATURES IN HIS SPARE TIME BUT AS TO THE PETITION IN THE PRESENT MATTER HE WANTED TO TAKE IT BY HIMSELF. ON DECEMBER 19TH AT APPROXIMATELY 6:00 P.M. BOWMAN WENT TO HIS HOUSE WITH A PETITION, THEY WENT OVER A LIST OF NAMES THEY HAD FROM THE FIRST PETITION AND THEN TOGETHER THEY WENT TO THE RESPONDENTS' PREMISES. HE SAID HE OBTAINED AND WITNESSED ALL THE SIGNATURES ON THE

PETITION, SOME ON THE EVENING OF THE 19TH AND THE BALANCE DURING THE FOLLOWING THREE DAYS ALL OF WHICH WERE OBTAINED IN THE STORE, SOME AT A DESK LOCATED ON THE MAIN FLOOR WHICH MOST EMPLOYEES USED, BUT ALL WHO SIGNED DID SO ON THEIR BREAK PERIODS DURING THE DAY. IT WAS WELL KNOWN AT THE STORE THAT HE OPPOSED THE UNION AS HE HAD HELPED IN THE FIRST PETITION AND THE EMPLOYEES CAME TO HIM TO SIGN IT. IN THE EVENING OF DECEMBER 19TH HE WAS IN THE STORE FOR ABOUT TWO HOURS AND WHILE DOING SOME SHOPPING TALKED TO DIFFERENT EMPLOYEES AND SAW MR. PFEFFER BUT DIDN'T TALK TO HIM. HE SAID HE DID NOT KNOW WHERE BOWMAN WENT IN THE STORE AND HE WAS NOT AWARE THAT HE WAS LOOKING AT THE EMPLOYEE CARDS. BOWMAN SHOWED HIM A LIST OF NAMES THE NEXT DAY BUT DID NOT GIVE HIM ANY NAMES FROM THE CARDS NOR DID SNYDERS USE ANY SUCH INFORMATION AS HE KNEW EVERYONE IN THE STORE IN ANY EVENT. HE HAD NO DISCUSSION WITH ANYONE FROM MANAGEMENT CONCERNING THE PETITION. AFTER HE HAD OBTAINED THE SIGNATURES ON THE PETITION HE GAVE IT BACK TO BOWMAN ON FRIDAY, DECEMBER 22ND AT ABOUT 5:00 P.M.

9. HAROLD PFEFFER, THE RESPONDENT'S STORE MANAGER, TESTIFIED THAT HE KNEW SNYDERS AND BOWMAN WHO ARE BOTH INCLUDED IN THE BARGAINING UNIT. THE RESPONDENT OPERATES A GENERAL RETAIL GROCERY BUSINESS IN KITCHENER IN PREMISES CONSISTING OF THREE LEVELS, THE FIRST LEVEL IS THE GENERAL SELLING AREA FOR THE PUBLIC, THE SECOND LEVEL CONTAINS THE GENERAL OFFICES OF THE COMPANY. FROM THESE OFFICES PARTS OF THE SELLING AREA CAN BE SEEN. HE STATED THAT HE KNEW OF A PETITION ONLY WHEN THE RESPONDENT WAS ADVISED BY THE BOARD THAT ONE HAD BEEN FILED IN THE FIRST APPLICATION. HE ATTENDED A HEARING AT THE BOARD IN THIS RESPECT AND THERE SAW BOWMAN WHOM HE ASSUMED WAS THE CHIEF SPOKESMAN FOR THE EMPLOYEES INVOLVED IN THE PETITION, BUT HE DID NOT KNOW ANYTHING ABOUT BOWMAN'S OR SNYDERS' ACTIVITIES WITH RESPECT TO THE PETITION BEFORE THEN, AND ALTHOUGH HE USUALLY SAW BOWMAN EACH DAY AT WORK HE HAD NEVER DISCUSSED THE HEARING WITH HIM. HE WAS NOT AWARE THAT BOWMAN HAD TAKEN TIME OFF WORK TO CIRCULATE A PETITION NOR WAS ANY CONSIDERATION GIVEN TO HIM BY THE RESPONDENT. DURING THE WEEK OF DECEMBER 18TH, PFEFFER WORKED SEVERAL EVENINGS DURING WHICH TIME THERE WERE 50 - 75 EMPLOYEES AT WORK IN THE STORE. HE ADMITTED HE SPOKE TO BOWMAN ON THE EVENING OF THE 19TH WHEN HE BUMPED INTO HIM IN THE HALL LEADING TO THE GENERAL OFFICES. HE WAS SURPRISED TO SEE BOWMAN THERE WHO WAS ALONE AT THAT TIME AND HE ASKED PFEFFER IF HE COULD USE THE EMPLOYEE CARD FILE. THESE CARDS SHOW THE NAME, ADDRESS AND PHONE NUMBER FOR EACH EMPLOYEE, DATE OF BIRTH, DATE OF HIRING, SOCIAL INSURANCE NUMBER AND CLOCK NUMBER. THE CARDS ARE KEPT IN A BOX WHICH COULD BE FOUND ANYWHERE IN THE HANDY QUICK REFERENCE ARE NOT CONSIDERED TO BE PERSONNEL RECORDS, AND ANYONE IN THE STAFF COULD USE THE CARDS AT ANY TIME. PERSONNEL RECORDS ARE KEPT SEPARATELY IN THE PERSONNEL OFFICE. AT BOWMAN'S REQUEST HE OBTAINED THE BOX FROM THE SWITCHBOARD, GAVE IT TO HIM AND WALKED AWAY. HE DID NOT ASK BOWMAN ANY QUESTIONS NOR DID BOWMAN SAY ANYTHING TO HIM AND DENIED THAT HE WAS IN THE OFFICE WITH BOWMAN FOR TWO HOURS OR AT ALL. HE SAID AFTER HE GAVE THE BOX TO BOWMAN HE WENT DOWNSTAIRS TO THE SALES AREA AND REMAINED THERE ALL EVENING AND DID NOT THEREAFTER SEE BOWMAN. HE KNEW THAT BOWMAN USED THE MERCHANDISING MANAGER'S OFFICE WHICH HE SAID ANY EMPLOYEE COULD

USE AND OTHERS FREQUENTLY DID BUT HE HAD NO IDEA WHAT BOWMAN DID THERE NOR HOW LONG HE WAS IN THE OFFICE. HE DID SEE SNYDERS ONCE THAT EVENING ON THE STAIRWAY IN THE GENERAL OFFICE AREA ABOUT 8:30 P.M. WHEN HE HAD RETURNED TO THE GENERAL OFFICE TO USE THE CASH DRAWER. PFEFFER RETURNED TO HIS OFFICE TO GET HIS HAT AND COAT A FEW MINUTES AFTER 10:00 P.M. THAT EVENING AND BOWMAN WAS NOT IN THE OFFICE THEN AND HE THOUGHT THE CARD FILE BOX WAS LEFT ON A DESK. THE APPLICANT FURTHER SUBMITTED THAT ON THE EVENING OF DECEMBER 19TH THE STORE WAS OPEN FOR BUSINESS AND FULLY STAFFED AND SINCE BOWMAN AND SNYDERS WERE LIKELY TO BE SEEN BY OTHER EMPLOYEES ENTERING THE STORE, BOWMAN GOING TO THE GENERAL OFFICES AND COINCIDENTALLY SNYDERS CIRCULATING A PETITION, TOGETHER WITH THE FACT THAT PFEFFER WAS KNOWN TO BE PRESENT AT THE STORE AND IN FACT CAME DOWN THE STAIRS AFTER BOWMAN WENT UP THAT EVENING, WOULD LIKELY INFLUENCE THE EMPLOYEES TO SIGN THE PETITION. THE CARDS WHICH BOWMAN USED WERE COMPANY RECORDS JUST AS MUCH AS PERSONNEL FILES AND THESE WERE MADE AVAILABLE TO BOWMAN FOR PURPOSES OF THE PETITION AND IT DOES NOT MATTER WHETHER THE INFORMATION THAT HE ATTAINED FROM THEM WAS IN FACT USED FOR THIS PURPOSE. IN ADDITION TO THE CARDS BOWMAN WAS ALLOWED TO USE A PRIVATE OFFICE WHILE HE USED THE CARDS. SUBSEQUENTLY, SNYDERS OBTAINED OTHER SIGNATURES AT A DESK LOCATED ON THE MAIN FLOOR AND THEN HANDED THE DOCUMENT BACK TO BOWMAN TO MAIL TO THE BOARD. THE APPLICANT SUBMITTED THAT THE EVIDENCE GIVEN BY BOWMAN AND SNYDERS IS NOT CONSISTENT AND THAT IN ALL THE CIRCUMSTANCES NO WEIGHT SHOULD BE GIVEN TO THE DOCUMENT BY THE BOARD.

10. THE BOARD IN CASES OF THIS NATURE HAS THE TASK OF DETERMINING WHETHER THE PETITION FILED IN OPPOSITION TO THE APPLICATION EXPRESSES THE TRUE WISHES OF THE EMPLOYEES CONCERNED AND THAT IT HAS NOT BEEN PUT FORTH THROUGH ANY IMPROPER MANAGEMENT INFLUENCE. IT HAS BEEN SAID IN MANY PREVIOUS CASES BEFORE THE BOARD THAT A SENSITIVE RELATIONSHIP EXISTS BETWEEN AN EMPLOYER AND ITS EMPLOYEES WHO ARE ACCORDINGLY RESPONSIVE TO THE WISHES OF THE EMPLOYER AND GENERALLY ATTEMPT TO IDENTIFY THEIR INTERESTS WITH THOSE OF THE EMPLOYER. IN THE SINNOTT NEWS CASE, 58 C.L.L.C. 1722; C.L.S. 76-605, THE BOARD MADE THE FOLLOWING STATEMENT:

IN ASSESSING THE WEIGHT TO BE ATTACHED TO DOCUMENTS SUBMITTED IN OPPOSITION TO AN APPLICATION, THE CIRCUMSTANCES UNDER WHICH THESE DOCUMENTS ORIGINATED AND WERE CIRCULATED OR SIGNED BECAME AN IMPORTANT FACTOR. AMONG OTHER THINGS, THE BOARD SEEKS ASSURANCES FROM PERSONS WITH FIRST-HAND KNOWLEDGE THAT MANAGEMENT HAS PLAYED NO PART IN THE ORIGATION, PREPARATION OR CIRCULATION OF THE DOCUMENT. IT DOES SO BECAUSE THE FACT IS THAT IN A NOT INSIGNIFICANT NUMBER OF CASES THE HAND OF MANAGEMENT IS ALL TOO EVIDENT IN STIMULATING OPPOSITION TO THE APPLICATIONS FOR CERTIFICATION. IT IS

OBVIOUS THAT DIFFERENT CONSIDERATIONS MAY APPLY WHERE THIS PROVES TO BE THE CASE, THAN WHERE THE EVIDENCE ESTABLISHES THAT THE DOCUMENTS IN OPPOSITION HAVE BEEN OBTAINED SOLELY THROUGH THE EFFORTS OF THE EMPLOYEES THEMSELVES AND WITHOUT MANAGEMENT ASSISTANCE.

11. THE EVIDENCE IS THAT IN A PREVIOUS APPLICATION FOR CERTIFICATION REGARDING THE EMPLOYEES IN THE BARGAINING UNIT IN THE INSTANT CASE, A PETITION IN OPPOSITION TO THE APPLICATION WAS FILED. THIS PETITION WAS ORIGINATED THROUGH THE EFFORTS OF BOWMAN AND CIRCULATED BY HIM AND SNYDERS, WHO WITNESSED ALL THE SIGNATURES THEREON. SOME OF THE SIGNATURES WERE OBTAINED FOR THAT PETITION ON THE RESPONDENTS' PREMISES AND DURING WORKING HOURS BUT IT WAS NOT ESTABLISHED THAT THE PERSONS WHO SIGNED IT AT THAT TIME WERE THEMSELVES WORKING. THERE IS ALSO THE UNCONTRADICTED EVIDENCE OF PFEFFER THAT HE FIRST BECAME AWARE OF THE PETITION WHEN THE RESPONDENT WAS SO ADVISED BY THE BOARD AND IT WAS ONLY ON ATTENDANCE AT THE HEARING AT THE BOARD THAT HE LEARNED WHO WAS THE SPOKESMAN FOR THOSE EMPLOYEES. IN THESE CIRCUMSTANCES WE FIND THAT THERE IS NO EVIDENCE TO ESTABLISH MANAGEMENT PARTICIPATION OR SUPPORT FOR THIS DOCUMENT.

12. THE PETITION IN THE INSTANT CASE CONTAINED THE NAMES OF 65 EMPLOYEES OF THE RESPONDENT, 17 OF WHOM WERE ALSO CLAIMED BY THE APPLICANT IN MEMBERSHIP. THIS PETITION WAS PREPARED BY THE SOLICITOR WHO HAD BEEN ENGAGED BY BOWMAN IN THE FIRST INSTANCE, AFTER BOWMAN HAD ATTENDED HIS OFFICE AFTER WORKING HIS REGULAR DAY. SUBSEQUENTLY, BOWMAN HANDED IT TO SNYDERS WHO WAS RESPONSIBLE FOR OBTAINING ALL THE SIGNATURES ON IT AFTER WHICH HE GAVE IT BACK TO BOWMAN WHO MAILED IT TO THE BOARD. THE CHARGES OF THE APPLICANT WITH RESPECT TO THE PETITION ARE THAT IT WAS PREPARED AND CIRCULATED WITH THE KNOWLEDGE AND APPROVAL OF THE EMPLOYER AND PARTICULARLY THAT BOWMAN MET WITH PFEFFER IN HIS PRIVATE OFFICE ON TUESDAY, DECEMBER 19TH, 1967 FROM APPROXIMATELY 7:30 P.M. UNTIL 9:30 P.M. IN ACCORDANCE WITH OUR FINDING IN PARAGRAPH 11 ABOVE THIS PETITION IS NOT AFFECTED IN ANY WAY BY THE PETITION FILED IN THE FIRST MATTER.

13. IT IS CLEAR THAT AFTER THE HEARING AT THE BOARD PFEFFER KNEW OF BOWMAN'S INTEREST AS AN OBJECTOR AND MAY WELL HAVE ASSUMED THAT THE REASON HE WANTED THE CARD FILE BOX ON DECEMBER 19TH WAS FOR THE PURPOSES OF THE PETITION BUT IT IS ALSO QUITE EVIDENT THAT HE DID NOT MEET WITH BOWMAN AS ALLEGED BY THE APPLICANT WITH RESPECT TO A PETITION. WE ACCEPT PFEFFER'S EVIDENCE THAT HE WAS SURPRISED WHEN HE BUMPED INTO BOWMAN IN THE HALLWAY OF THE GENERAL OFFICE. HE THEN CONSENTED TO LET BOWMAN USE THE CARDS, OBTAINED THE BOX FROM THE SWITCHBOARD AND LEFT HIM ALONE. THERE IS NOTHING TO SUPPORT THAT THIS ENCOUNTER WAS PREARRANGED BY EITHER OF THEM AND WE HAVE THE EVIDENCE THAT ANY EMPLOYEE COULD USE THESE CARDS AT ANY TIME WITHOUT PERMISSION AS THEY DID NOT CONTAIN ANY PRIVATE OR PERSONAL INFORMATION.

INDEED BOWMAN HAD USED THEM BEFORE IN THE COURSE OF HIS DUTIES, FURTHER IT IS PLAUSIBLE TO ASSUME THAT THE OTHER EMPLOYEES WOULD, AFTER THE FIRST APPLICATION, KNOW OF BOWMAN'S AND SNYDERS' INTERESTS AND AT LEAST THOSE CONCERNED ON THE FIRST PETITION WOULD BE RECEPTIVE TO A FURTHER PETITION WHEN CIRCULATED BY SNYDERS. SNYDERS STATED HE OBTAINED SOME SIGNATURES IN THE EVENING OF DECEMBER 19TH AND THE BALANCE ON THE FOLLOWING DAY AT A DESK USED BY THE EMPLOYEES ON THE MAIN SHOPPING AREA OF THE STORE DURING COFFEE AND LUNCH BREAKS. IT IS SIGNIFICANT AS WELL THAT THE EMPLOYEES DO NOT HAVE RIGID WORK STATIONS SUCH AS IN A MANUFACTURING PLANT AND THEIR ACTIONS OF GOING TO A DESK WHICH THEY REGULARLY USED IN ANY EVENT WOULD NOT NECESSARILY BE NOTICED BY MANAGEMENT PERSONNEL IN ANY SIGNIFICANT WAY.

14. WE HAVE CAREFULLY CONSIDERED THE TESTIMONY OF ALL THE WITNESSES IN THIS MATTER WHICH IS SUBSTANTIALLY CONSISTENT IN THE MATERIAL FACTS AND ON THEIR EVIDENCE WE FIND THAT THE RESPONDENT HAS NOT TAKEN ANY ACTIONS WHICH WOULD INFLUENCE THE EMPLOYEES IN ANY IMPROPER WAY SO AS TO DESTROY THE EFFICACY OF THE PETITION.

15. WE ARE THEREFORE SATISFIED THAT THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

16. IN REGARD TO THE APPLICANT'S SUBMISSION THAT THE BOARD SHOULD EXERCISE ITS DISCRETION TO GRANT IT A CERTIFICATE PURSUANT TO THE PROVISIONS OF SECTION 7(5) OF THE ACT, HAVING GIVEN WEIGHT TO THE PETITION THE APPLICANT HAS NOT DEMONSTRATED THE PERCENTAGE OF MEMBERSHIP REQUIRED UNDER THIS SECTION. AS STATED IN THE UNDERWOOD MANUFACTURING LTD. CASE, 52 CLLC 1417:

"IT SHOULD ALSO BE NOTED THAT, AS IN THIS CASE, A FURTHER CONDITION PRECEDENT TO THE EXERCISE OF THE BOARD'S DISCRETION IS THAT THE APPLICANT SHALL HAVE FIRST DEMONSTRATED THAT IT DOES IN FACT ENJOY THE SUPPORT OF A MAJORITY OF EMPLOYEES."

ACCORDINGLY, THE BOARD IN THE CIRCUMSTANCES OF THIS CASE, WOULD NOT EXERCISE ITS DISCRETION IN FAVOUR OF THE APPLICANT AS IT REQUESTED. SEE ALSO WOLVERINE TUBE LTD. CASE, 63 CLLC 1226.

17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON DECEMBER 22ND, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER

SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 2 OF THE BOARD'S DECISION DATED FEBRUARY 14TH, 1968 IN THIS MATTER. ALL EMPLOYEES IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

19. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

20. THE MATTER IS REFERRRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER: MAY 21ST, 1968.

I DISSENT. AFTER GIVING CAREFUL CONSIDERATION TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, IN THE CIRCUMSTANCES OF THIS CASE, I FIND THAT THE DOCUMENT PRESENTED IN OPPOSITION TO THIS APPLICATION IS NOT LIKELY TO REFLECT THE TRUE WISHES OF THE EMPLOYEES CONCERNED. I WOULD NOT, THEREFORE, GIVE WEIGHT TO THE PETITION SO AS TO QUALIFY OR WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT.

SINCE THEN THE APPLICANT WOULD HAVE UNQUALIFIED EVIDENCE OF MEMBERSHIP FOR FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, I WOULD GRANT A CERTIFICATE TO THE APPLICANT.

14182-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. NORTH YORK GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER) V. EMPLOYEE (OBJECTOR).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
J.E.C. ROBINSON AND P.J. O'KEEFFE.

APPEARANCES AT HEARING: JOHN H. PARKER, JOHN SULLIVAN FOR THE APPLICANT, GEORGE S.P. FERGUSON, Q.C., ROBERT DUNN, JOHN MACKAY FOR THE RESPONDENT, R. LIVINGSTON, R. SOULIERE FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 1, 1968.

1. THE APPLICANT AND THE RESPONDENT FILED STATEMENTS OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS TO THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 1 OF SECTION 45 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE TAKING OF THE REPRESENTATION VOTE PURSUANT TO THE BOARD'S DIRECTION OF MARCH 7TH, 1968 IN THIS MATTER.

2. THE APPLICANT AND THE RESPONDENT ALLEGE THAT THE INTERVENING UNION VIOLATED THE NO-PROPAGANDA RULE BY HAVING POSTED A BULLETIN ON A WALL LOCATED NEAR THE PLACE OF TAKING THE VOTE DURING THE 72 HOUR PERIOD IMMEDIATELY PRECEDING THE TAKING OF THE VOTE. THE REGISTRAR, BY LETTER DATED MARCH 13TH, 1968, NOTIFIED THE PARTIES THAT HE HAD FIXED THE DATE OF MARCH 20TH, 1968 AS THE DATE FOR THE VOTE AND THAT THE NOTICE OF TAKING OF VOTE CONTAINED THE FOLLOWING STATEMENT:

"I DIRECT ALL INTERESTED PERSONS TO REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF SATURDAY, THE 16TH DAY OF MARCH, 1968 UNTIL THE VOTE IS TAKEN".

3. IT IS CLEAR FROM THE EVIDENCE GIVEN AT THE HEARING THAT A BULLETIN HEADED "LOCAL 101 NEWS", DATED MARCH 11TH, 1968 AND PUBLISHED BY THE CANADIAN UNION OF OPERATING ENGINEERS WAS POSTED ON A WALL OVER A DESK WHICH WAS REGULARLY USED BY THE ENGINEERS IN THE COURSE OF THEIR DUTIES AND WHERE OTHER NOTICES SUCH AS THE LABOUR RELATIONS BOARD FORMS WERE FOUND. CLAYTON HOUGH, AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT, TESTIFIED THAT HE PUT UP THIS NEWS LETTER ABOUT TWO DAYS AFTER HE RECEIVED IT IN THE MAIL AND UNDERLINED IN RED PENCIL THE WORDS CONTAINED IN THE BULLETIN READING, "LOCAL 101 EXTENDS WELCOME TO THE ENGINEERS AT THE NORTH YORK GENERAL HOSPITAL" AND ALSO AT THE BOTTOM OF THE BULLETIN WROTE IN THE WORDS, "BUY CANADIAN". HE SAID THAT IT REMAINED ON THE WALL UNTIL AFTER THE VOTE AND ADMITTED THAT IT SUPPORTS THE INTERVENING UNION.

4. WILLIAM MCQUEEN, AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT, TESTIFIED THAT THE BULLETIN WAS ON THE WALL FOR ABOUT TWO WEEKS PRIOR TO THE VOTE. HE DID NOT KNOW WHO HAD PUT IT THERE BUT HE HAD WRITTEN ON THE BOTTOM OF THE BULLETIN THE WORDS "VOTE CANADIAN" AND "MARCH 20TH, 1968" ABOUT 2 DAYS AFTER HE NOTICED IT ON THE WALL.

5. MR. KONSTANTINE GRAIKESTE, AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT, AND WHO WAS ALSO LISTED IN THE ARRANGEMENTS FOR THE VOTE AS SETTLED BY THE PARTIES AS AN ALTERNATE SCRUTINEER FOR THE INTERVENER UNION, TESTIFIED THAT HE SAW THE BULLETIN ABOUT TWO WEEKS PRIOR TO THE DATE OF THE VOTE. IT WAS POSTED ABOVE A DESK WHERE THE ENGINEERS NORMALLY GO TO DO THEIR LOG SHEETS ETC. THE BULLETIN COULD NOT, HOWEVER, BE SEEN FROM THE ROOM WHERE THE VOTE WAS TAKEN. HE SAID IT WAS SEEN WITHIN A DAY OF THE VOTE AND FURTHER MR. SULLIVAN, A REPRESENTATIVE OF THE APPLICANT, SAW IT BEFORE THE POLLS WERE CLOSED AND SAID TO GRAIKESTE THAT THE BULLETIN WAS PROPAGANDA. MR. GRAIKESTE SAID THAT NO ONE HAD TOLD HIM ANYTHING ABOUT THE "SILENT PERIOD". AFTER HE VOTED, AT HIS OWN VOLITION, HE TOOK DOWN THE BULLETIN FROM THE WALL AND THREW IT INTO THE INCINERATOR. HE DID NOT TAKE DOWN THE OTHER NOTICES. AFTER THE VOTE, AT THE REQUEST OF MR. SULLIVAN AND MR. MACKAY, HOSPITAL ADMINISTRATOR, HE RETRIEVED THE BULLETIN FROM THE INCINERATOR AND GAVE IT TO THEM. HE STATED THAT HE WAS NOT ASKED TO ACT AS A REPRESENTATIVE OF THE INTERVENER NOR DID ANYONE FROM THE INTERVENER SPEAK TO HIM ON THE DATE OF THE VOTE.

6. THE INTERVENER SUBMITTED THAT IN THE CIRCUMSTANCES OF THIS CASE IT HAD NOT VIOLATED THE NO-PROPAGANDA RULE. IT SHOULD NOT BE HELD RESPONSIBLE FOR THE ACTS OF THE EMPLOYEES WHO TOOK IT UPON THEMSELVES TO POST THE BULLETIN AND IN ANY EVENT IT IN NO WAY INFLUENCED THEM IN THE VOTE.

7. THE BULLETIN ITSELF DIRECTLY RELATES TO ACTIVITIES OF THE INTERVENER UNION AND WAS MAILED TO THE EMPLOYEES CONCERNED IN THIS MATTER SOME TWO WEEKS PRIOR TO THE VOTE BEING TAKEN. MR. HOUGH, AN ELIGIBLE VOTER, POSTED THE BULLETIN ON THE WALL, UNDERLINED CERTAIN WORDS IN IT AND ADDED ON THE BOTTOM OF IT THE WORDS "BUY CANADIAN". THEN MR. MCQUEEN, ALSO AN ELIGIBLE VOTER, ADDED THE WORDS "VOTE CANADIAN" AND THE DATE OF "MARCH 20TH, 1968". BOTH OF THESE PERSONS ARE "INTERESTED PERSONS" AFFECTED BY THE PROHIBITION AGAINST PROPAGANDA WITHIN THE MEANING OF SECTION 43 OF THE RULES. IT IS ABUNDANTLY CLEAR THAT THE INTENTION OF THESE PERSONS WAS TO INFLUENCE THE RESULT OF THE VOTE. WE HAVE NO HESITATION IN FINDING THAT THE BULLETIN CONSTITUTED PROPAGANDA OR ELECTIONEERING WITHIN THE MEANING OF THE DIRECTION OF THE REGISTRAR. THE EVIDENCE ESTABLISHES THAT THE BULLETIN REMAINED POSTED IN A PLACE WHERE IT COULD BE READILY SEEN BY THE EMPLOYEES CONCERNED DURING THE PROHIBITED PERIOD. IN THE CANADIAN GYPSUM CASE, O.L.R.B., MONTHLY REPORT, JANUARY 1960 AT PAGE 349 THE BOARD SAID:

THE RULE PROHIBITING PROPAGANDA AND ELECTIONEERING DURING THE 72 HOUR PERIOD IMMEDIATELY PRECEDING THE VOTE IS A STRICT ONE AND ONE THAT IMPOSES A HEAVY ONUS ON THE PARTIES TO SEE THAT THE RULE IS NOT INFRINGED.

8. THE INTERVENER UNION OBVIOUSLY WAS AWARE THAT THE BULLETIN HAD BEEN MAILED TO THE EMPLOYEES SOME TWO WEEKS PRIOR TO THE DATE OF THE VOTE. IT DID NOT HOWEVER GIVE ANY INSTRUCTIONS CONCERNING THE PROHIBITED PERIOD TO ANYONE IN THE BARGAINING UNIT INCLUDING MR. GRAIKESTE EVEN THOUGH HE WAS NAMED IN THE LETTER CONCERNING THE VOTING ARRANGEMENTS AS BEING THE INTERVENER'S ALTERNATE SCRUTINEER. AS SET OUT ABOVE THERE IS A HEAVY ONUS ON THE PARTIES TO SEE THAT THE NO-PROPAGANDA RULE IS NOT VIOLATED AND IN THE CIRCUMSTANCES OF THE INSTANT CASE WE FIND THAT THE INTERVENER DID NOT DISCHARGE THIS ONUS. FURTHER, THERE IS NO DOUBT THAT THE CONDUCT OF CERTAIN OF THE ELIGIBLE VOTERS VIOLATED THE REGISTRAR'S DIRECTION REGARDING THE VOTE. FOR REFERENCE SEE ALSO THE MAPLE LEAF VENEER CASE, O.L.R.B., MONTHLY REPORT, MAY 1961, PP. 58-60, AND THE AUTOMATIC ELECTRIC CASE, 1961 CCH CANADIAN LABOUR LAW REPORTER ¶16,226.

9. ACCORDINGLY IT IS OUR OPINION ON ALL THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES THAT A NEW VOTE SHOULD BE TAKEN. THE RESULT OF THE VOTE HELD ON MARCH 20TH, 1968, IS THEREFORE SET ASIDE AND THE BOARD DIRECTS THAT A NEW REPRESENTATION VOTE BE TAKEN OF THE

EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

14233-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796
(APPLICANT) v. GEORGE BROWN COLLEGE OF APPLIED ARTS AND TECHNOLOGY
(RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
A. MAIN AND H.F. IRWIN.

APPEARANCES AT HEARING: A. GOLDEN AND J. SULLIVAN FOR THE APPLICANT
AND K. D. MACLENNAN AND J. L. DAVISON FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 9, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION. THE RESPONDENT SUBMITS THAT IT IS AN AGENCY OF THE CROWN AND, AS SUCH, THE LABOUR RELATIONS ACT DOES NOT APPLY TO IT.

2. IN THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1967, P. 829, THE BOARD FOUND FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY (HEREINAFTER REFERRED TO AS FANSHAWE COLLEGE) TO BE AN AGENT OF THE CROWN, BOTH AT COMMON LAW AND UNDER THE CROWN AGENCY ACT, R.S.O. 1960, C. 81. CONSEQUENTLY, THE BOARD WAS WITHOUT JURISDICTION TO DEAL WITH AN APPLICATION FOR CERTIFICATION AFFECTING EMPLOYEES OF THAT COLLEGE. IN ARRIVING AT ITS DECISION, THE BOARD RELIED ON THE PROVISIONS OF SECTION 14A OF THE DEPARTMENT OF EDUCATION ACT, R.S.O. 1960, C. 94, AS AMENDED, AND THE REGULATIONS MADE PURSUANT THERETO, AND SPECIFICALLY O. REG. 268/65. IT IS CONCEDED BY COUNSEL FOR THE APPLICANT IN THE INSTANT CASE THAT SECTION 14A OF THE DEPARTMENT OF EDUCATION ACT APPLIES TO BOTH FANSHAWE COLLEGE AND TO THE PRESENT RESPONDENT. IT FOLLOWS, THEREFORE, THAT O. REG. 268/65 ALSO APPLIES TO THE RESPONDENT. IT WAS SUBMITTED, HOWEVER, THAT THE FANSHAWE COLLEGE CASE DID NOT CORRECTLY SET OUT THE POSITION OF EITHER THAT COLLEGE OR THE PRESENT RESPONDENT VIS-A-VIS THE CROWN. TO THIS END CERTAIN EVIDENCE WAS ADDUCED AND REPRESENTATIONS WERE MADE IN CONNECTION THEREWITH.

3. THE APPLICANT'S CHIEF ATTACK ON THE FANSHAWE COLLEGE DECISION WAS CONCERNED WITH THE FOLLOWING FINDING IN THAT CASE:

...FINALLY, WHILE THE BOARD OF GOVERNORS MAY APPOINT A DIRECTOR OF THE COLLEGE, PRINCIPALS FOR DIVISIONS OF THE COLLEGE, A REGISTRAR, BURSAR, ADMINISTRATIVE, TEACHING AND NON-TEACHING STAFF AS REQUIRED, THEIR SALARIES AND

WAGE RATES ARE ESTABLISHED BY THE COUNCIL OF
REGENTS AND MUST BE APPROVED BY THE MINISTER.

COUNSEL ARGUED THAT THE EVIDENCE IN THE INSTANT CASE DISCLOSED THAT THE BOARD OF GOVERNORS, NOT THE COUNCIL OF REGENTS, SET THE SALARY AND WAGE RATES AS WELL AS THE TERMS AND CONDITIONS OF EMPLOYMENT OF THE PERSONS APPOINTED BY IT. CONSEQUENTLY, THE BOARD OF GOVERNORS WAS IN A POSITION TO BARGAIN COLLECTIVELY ABOUT SUCH MATTERS. IN OUR VIEW, THE EVIDENCE DOES NOT SUPPORT THIS ARGUMENT. THE EVIDENCE MERELY ESTABLISHES THAT A COMMITTEE OF THE COLLEGE SUBMITTED PROPOSED SALARY SCHEDULES, ETC., TO THE BOARD OF GOVERNORS AND ULTIMATELY RECEIVED BACK APPROVAL OF THE PROPOSALS FROM THAT BOARD. THERE IS NO EVIDENCE TO SHOW WHAT ACTION THE BOARD OF GOVERNORS TOOK WITH RESPECT TO THE PROPOSALS.

4. AT THIS POINT IT IS NECESSARY TO CONSIDER SECTION 6(1) OF O. REG. 268/65. THAT SUBSECTION PROVIDES AS FOLLOWS:

6.-(1) A BOARD OF GOVERNORS SHALL
APPOINT,

- (A) A DIRECTOR OF THE COLLEGE;
- (B) A PRINCIPAL FOR EACH DIVISION OF
THE COLLEGE;
- (C) A REGISTRAR AND A BURSAR AND
SUCH OTHER ADMINISTRATIVE,
TEACHING AND NON-TEACHING
PERSONNEL AS ARE NECESSARY,

AT THE SALARY AND WAGE RATES AND ACCORDING TO
THE TERMS AND CONDITIONS ESTABLISHED BY THE
COUNCIL OF REGENTS AND APPROVED BY THE
MINISTER.

COUNSEL FOR THE APPLICANT SUBMITTED THAT, HAVING REGARD TO THE FACT THAT SOME 19 COLLEGES OF APPLIED ARTS AND TECHNOLOGY HAD ALREADY BEEN ESTABLISHED IN THE PROVINCE, IT WOULD BE AN IMPOSSIBLE TASK FOR THE COUNCIL OF REGENTS TO DETERMINE SALARY AND WAGE RATES AND OTHER TERMS AND CONDITIONS FOR EACH COLLEGE. ACCORDINGLY, THE ONLY CONSTRUCTION THAT COULD BE PLACED ON SECTION 6(1) WAS THAT SUCH MATTERS WERE TO BE DETERMINED BY THE BOARD OF GOVERNORS FOR EACH COLLEGE. IN THE FAN-SHAWE COLLEGE CASE THIS BOARD OBVIOUSLY DID NOT PLACE THAT INTERPRETATION THE PROVISIONS OF SECTION 6(1) AND WE HAVE NO HESITATION IN SAYING THAT WE AGREE WITH THE BOARD'S EARLIER INTERPRETATION. ON A PLAIN READING OF THE SECTION IT IS THE COUNCIL OF REGENTS WHICH ESTABLISHES "THE SALARIES AND WAGE RATES AND...THE TERMS AND CONDITIONS" OF PERSONS APPOINTED BY THE BOARD OF GOVERNORS. THIS VIEW IS ENHANCED BY THE FACT THAT THE RATES, ETC., SO ESTABLISHED MUST BE APPROVED BY THE MINISTER.

5. AS NOTED ABOVE, THE MAIN THRUST OF THE APPLICANT'S SUBMISSION IN THIS CASE WAS DIRECTED TO THE POWER OF THE BOARD OF GOVERNORS OF THE RESPONDENT COLLEGE TO SET SALARIES AND OTHER CONDITIONS OF EMPLOYMENT. THE APPLICANT HAS FAILED TO ESTABLISH BY PERSUASIVE EVIDENCE THAT THE BOARD OF GOVERNORS IN FACT EXERCISES SUCH POWERS. EVEN IF IT HAD SUCCEEDED IN THE FIRST PART OF ITS CASE, IT STILL HAS NOT CONVINCED US THAT THE BOARD OF GOVERNORS IN LAW POSSESSES THE NECESSARY POWERS SO TO ACT. WE ARE SATISFIED THAT THERE IS NO MATERIAL DISTINCTION BETWEEN THIS CASE AND THE FANSHAWE COLLEGE CASE AND WE THEREFORE FIND BOTH AT COMMON LAW AND UNDER THE CROWN AGENCY ACT THAT THE RESPONDENT IS AN AGENT OF THE CROWN AND THAT THE ONTARIO LABOUR RELATIONS ACT HAS NO APPLICATION TO IT. THE BOARD, THEREFORE, IS WITHOUT JURISDICTION TO DEAL WITH THIS APPLICATION FOR CERTIFICATION.

6. THESE PROCEEDINGS ARE ACCORDINGLY TERMINATED.

14265-67-R: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION - LOCAL 261, OTTAWA (APPLICANT) V. THE TALISMAN MOTOR INN (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: ALICK RYDER, J. GRAHAM, AND F. GRELLA FOR THE APPLICANT, W. S. COOK AND R. A. EBY FOR THE RESPONDENT, AND JAMES W. TOUHEY AND LUCIEN RENAUD FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: MAY 23, 1968.

1. DURING THE COURSE OF AN EXAMINATION BEING CONDUCTED PURSUANT TO THE DECISION OF THE BOARD HEREIN DATED MARCH 28TH, 1968, A DISPUTE AROSE AS TO THE PROPRIETY OF EXAMINING INTO THE DUTIES AND FUNCTIONS OF PERSONS EMPLOYED IN THE CATEGORIES SET OUT BELOW, ON THE GROUNDS THAT THE RESPONDENT HAD PROPOSED THEIR EXCLUSION FROM THE BARGAINING UNIT AT THE HEARING AND THE APPLICANT HAD AGREED. THE CATEGORIES OR CLASSIFICATIONS ARE:

HEAD ACCOUNTANT
ASSISTANT CATERING MANAGER
RESERVATION SECRETARY
SECURITY OFFICER
HEAD BARTENDER
BEACHCOMBER ROOM MANAGER
HOSTESS, DINING ROOM
CHIEF ENGINEER

THE BOARD HAS HAD THE BENEFIT OF WRITTEN SUBMISSIONS MADE BY THE APPLICANT, THE RESPONDENT, AND THE OBJECTORS DATED APRIL 25TH, 1968, MAY 3RD, 1968, AND MAY 3RD, 1968, RESPECTIVELY.

2. THE DETERMINATION OF THE APPROPRIATE BARGAINING UNIT IS A MATTER FOR THE BOARD UNDER THE PROVISIONS OF SECTION 6 OF THE LABOUR RELATIONS ACT. THE PRIME PURPOSE OF THE DECISION OF MARCH 28TH, 1968, WAS TO OBTAIN FURTHER INFORMATION FOR THE BOARD WITH RESPECT TO THE PROPOSED BARGAINING UNIT TO ASSIST IT IN MAKING A DETERMINATION OF THE APPROPRIATE BARGAINING UNIT. IN ORDER TO PROPERLY CARRY OUT THE PURPOSES OF THE BOARD AND TO OBTAIN THE INFORMATION IT REQUIRES, THE EXAMINER SHOULD, AND HE IS HEREBY DIRECTED, TO EXAMINE ALL PERSONS EMPLOYED IN THE CATEGORIES OR CLASSIFICATIONS SET OUT ABOVE. THE BOARD RE-CONFIRMS ITS DECISION OF MARCH 28TH, 1968, THE SCOPE OF WHICH IS NOT RESTRICTED BY ANYTHING CONTAINED IN THIS DECISION.

14364-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210, AFL-CIO-CLC (APPLICANT) V. BOARD OF TRUSTEES OF THE HARROW DISTRICT HIGH SCHOOL, HARROW, ONTARIO (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

DECISION OF THE BOARD: MAY 27, 1968.

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2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED APRIL 30TH, 1968, IN THIS MATTER, AND A LETTER FROM THE RESPONDENT DATED MAY 6TH, 1968 AND FROM THE APPLICANT DATED MAY 14TH, 1968, WITH RESPECT THERETO, THE BOARD FINDS THAT CLARENCE BRUNNER IS NOT AN INDEPENDENT CONTRACTOR BUT IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. IN ARRIVING AT THIS DECISION, THE BOARD HAS APPLIED THE CRITERIA AND HAS CONSIDERED THE FOUR TESTS (I.E. CONTROL, OWNERSHIP OF TOOLS, CHANCE OF PROFIT, RISK OF LOSS) ENUMERATED BY THE BOARD IN THE CANADA BREAD COMPANY LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER 1961, ¶16,223, C.L.S. 76-807, AND APPLIED IN THE SEVEN-UP BOTTLING COMPANY (FORT WILLIAM) LIMITED CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, ¶16,227, C.L.S. 76-840, AND CHUKUNI LUMBER COMPANY LIMITED CASE, 64 C.L.L.C. ¶16,301.

3. WHEN THE TESTS REFERRED TO ABOVE HAVE BEEN APPLIED TO THE FACTS OF THIS CASE, IT IS READILY APPARENT THAT THE RELATIONSHIP BETWEEN THE RESPONDENT AND CLARENCE BRUNNER, HIS WIFE AND SON, IS THAT OF AN EMPLOYER-EMPLOYEE.

4. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 3RD, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14433-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796
(APPLICANT) v. THE ROYAL BANK OF CANADA (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
D.B. ARCHER AND H.F. IRWIN.

APPEARANCES AT HEARING: J. SULLIVAN AND E. HEDGES FOR THE APPLICANT,
A.J. BATES, T.F. STORIE AND A. STEPHANSON FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 2, 1968.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF STATIONARY ENGINEERS EMPLOYED BY THE RESPONDENT AT ITS ROYAL BANK OF CANADA BUILDING IN OTTAWA.

4. THE RESPONDENT SUBMITS THAT THE BOARD IS WITHOUT JURISDICTION TO DEAL WITH THE APPLICATION ON THE GROUNDS THAT THE OPERATIONS OF THE RESPONDENT FALL EXCLUSIVELY WITHIN FEDERAL JURISDICTION.

5. THE RESPONDENT IS ENGAGED IN THE BUSINESS OF "BANKING" UNDER AUTHORITY OF THE BANK ACT (STATUTES OF CANADA 1966-67 c. 87). THIS LEGISLATION WAS ENACTED BY THE PARLIAMENT OF CANADA UNDER AUTHORITY OF ITEM 15, "BANKING, INCORPORATION OF BANKS, AND THE ISSUE OF PAPER MONEY", WHICH IS ONE OF THE ENUMERATED CLASSES OF SUBJECTS SPECIFICALLY DECLARED TO BE WITHIN THE EXCLUSIVE LEGISLATIVE AUTHORITY OF THE PARLIAMENT OF CANADA BY SECTION 91 OF THE BRITISH NORTH AMERICA ACT. FURTHER, SECTION 53 OF THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT, R.S.C. 1952 c. 152, PROVIDES THAT THE ACT "APPLIES IN RESPECT OF EMPLOYEES WHO ARE EMPLOYED UPON OR IN CONNECTION WITH THE OPERATION OF ANY WORK, UNDERTAKING OR BUSINESS THAT IS WITHIN THE LEGISLATIVE AUTHORITY OF THE PARLIAMENT OF CANADA INCLUDING, BUT NOT SO AS TO RESTRICT THE GENERALITY OF THE FOREGOING ... (H) ANY WORK, UNDERTAKING OR BUSINESS OUTSIDE THE EXCLUSIVE LEGISLATIVE AUTHORITY OF THE LEGISLATURE OF ANY PROVINCE; AND IN RESPECT OF THE EMPLOYERS OF ALL SUCH EMPLOYEES IN THEIR RELATIONS WITH SUCH EMPLOYEES AND IN RESPECT OF TRADE UNIONS AND EMPLOYERS' ORGANIZATIONS COMPOSED OF SUCH EMPLOYEES OR EMPLOYERS."

6. WE WOULD REFER ALSO TO A DECISION OF THE CANADA LABOUR RELATIONS BOARD IN KITIMAT, TERRACE AND DISTRICT GENERAL WORKERS' UNION, LOCAL NO. 1583, C.L.C. AND BANK OF NOVA SCOTIA, KITIMAT, 1959 C.L.L.C. VOL. 1, 1944-1959, ¶18,152. IN THAT CASE, THE UNION WAS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE BANK'S BRANCH AT KITIMAT. WHILE THE BOARD FOUND THAT THE UNIT APPLIED FOR WAS NOT APPROPRIATE FOR COLLECTIVE BARGAINING, IT MADE THE FOLLOWING STATEMENT AT P. 1799:

THE INDUSTRIAL RELATIONS AND DISPUTES INVESTIGATION ACT APPLIES TO BANKS AND THEIR EMPLOYEES, AND THE BOARD WILL CONSIDER ALL APPLICATIONS CONCERNING BANK EMPLOYEES, WITH THE PURPOSE OF GIVING EFFECT TO THE INTENT OF THE ACT.

7. IT IS CLEAR FROM THE ABOVE CITED STATUTES THAT BANK EMPLOYEES, IN ALL MATTERS, FALL UNDER FEDERAL JURISDICTION. FURTHER, THE CANADA LABOUR RELATIONS BOARD HAS ASSERTED ITS JURISDICTION OVER BANK EMPLOYEES IN MATTERS RELATING TO LABOUR RELATIONS. THIS BOARD, ACCORDINGLY, FINDS THAT IT IS WITHOUT JURISDICTION TO DEAL WITH THE INSTANT APPLICATION.

8. THE PROCEEDING, THEREFORE, IS TERMINATED.

14451-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CENTENNIAL COLLEGE OF APPLIED ARTS AND TECHNOLOGY (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT HEARING: R. LIVINGSTONE FOR THE APPLICANT, W.K. WINKLER, J.F. MAWDSLEY, I.D. GOULD AND E. STACEY FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 15, 1968.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE POWER HOUSE OF THE RESPONDENT AT METROPOLITAN TORONTO. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE RESPONDENT IS AN AGENT OF THE CROWN AND THAT THE BOARD IS WITHOUT JURISDICTION IN THIS MATTER.

3. IN ITS DECISION IN THE FANSHAWE COLLEGE OF APPLIED ARTS AND TECHNOLOGY CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1967, P. 829 AND THE MORE RECENT GEORGE BROWN COLLEGE OF APPLIED ARTS AND TECHNOLOGY CASE, BOARD FILE NO. 14233-67-R, THE BOARD FOUND THAT AT COMMON LAW

AND UNDER THE CROWN AGENCY ACT, R.S.O. 1960 c. 81, BOTH OF THE ABOVE NAMED COLLEGES WERE AGENTS OF THE CROWN. SECTION 14A OF THE DEPARTMENT OF EDUCATION ACT, R.S.O. 1960 c. 94, AS AMENDED, AND THE REGULATIONS MADE PURSUANT THERETO, AND SPECIFICALLY O. REG. 268/65, APPLY TO THE RESPONDENT AS WELL AS TO FANSHAW COLLEGE AND GEORGE BROWN COLLEGE. FOR THE REASONS GIVEN IN THE TWO EARLIER CITED CASES, THE BOARD FINDS THAT THE RESPONDENT IS A CROWN AGENCY. THE BOARD THEREFORE FURTHER FINDS THAT IT IS WITHOUT JURISDICTION TO DEAL WITH THE INSTANT APPLICATION.

4. THE PROCEEDINGS ARE ACCORDINGLY TERMINATED.

14476-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. THE CORPORATION OF THE CITY OF WELLAND (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1115 (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND D. B. ARCHER.

APPEARANCES AT HEARING: R. RUSSEL, B. SMITH FOR THE APPLICANT; ROBERT H.H. REILLY, D. H. LANDELLS, W. A. HOLOWACZ FOR THE RESPONDENT; T. E. ARMSTRONG, J. BEATTIE FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 16, 1968.

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2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT HAS SUGGESTED THE FOLLOWING DESCRIPTION FOR THE BARGAINING UNIT:

"ALL EMPLOYEES SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN AND THOSE EMPLOYEES NOW COVERED BY AGREEMENTS BETWEEN UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) AND ITS LOCAL 517, AND EMPLOYEES COVERED BY THE COLLECTIVE AGREEMENT OF THE CANADIAN UNION OF PUBLIC EMPLOYEES, ALL IN THE CITY OF WELLAND."

IT IS CLEARLY INTENDED THAT THIS APPLICATION CONCERNS ONLY THOSE EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE RESPONDENT'S WELLAND POLLUTION CONTROL PLANT.

3. THE INTERVENER AND THE RESPONDENT HAVE ENTERED INTO A COLLECTIVE AGREEMENT DATED APRIL 7TH, 1967. ARTICLE 2.01 THEREOF IS IN PART AS FOLLOWS:

THE CORPORATION RECOGNIZES THE UNION AS THE SOLE AND EXCLUSIVE BARGAINING AGENT FOR ALL OF THE EMPLOYEES OF THE CORPORATION SAVE AND EXCEPT [CERTAIN CLASSIFICATIONS NOT HERE RELEVANT]...AND ALL PERSONS COVERED BY ANY SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF WELLAND AND THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) LOCAL 517.

4. THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) AND ITS GENERAL WORKERS LOCAL 517 UE AND THE RESPONDENT HAVE ENTERED INTO A COLLECTIVE AGREEMENT DATED 1 JANUARY 1967. ARTICLE 1 THEREOF IS AS FOLLOWS:

THE CORPORATION RECOGNIZES THE UNION AS THE EXCLUSIVE BARGAINING AGENCY FOR ALL HOURLY RATED EMPLOYEES OF THE WORKS DEPARTMENT OF THE CORPORATION OF THE CITY OF WELLAND EXCEPT OFFICE STAFF, FOREMEN, WORKING FOREMEN AND THOSE ABOVE THE RANK OF WORKING FOREMEN.

5. IT IS CLEAR FROM THE REPRESENTATIONS OF THE PARTIES IN THIS MATTER THAT THE EMPLOYEES OF THE RESPONDENT CONCERNED IN THIS APPLICATION FALL UNDER THE PROVISIONS OF ONE OR OTHER OF THE COLLECTIVE AGREEMENTS REFERRED TO ABOVE.

6. ON ALL THE EVIDENCE BEFORE US, AND IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD FINDS THAT THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT ARE COVERED UNDER THE TERMS OF THE SUBSISTING COLLECTIVE AGREEMENT DATED JANUARY 1ST, 1967 BETWEEN THE UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) AND ITS GENERAL WORKERS LOCAL 517 UE AND THE RESPONDENT.

7. HAVING REGARD TO THE PRINCIPLE SET OUT IN THE LOBLAW GROCETERIA CASE, 1946 CLLC 1100, ¶16,411, THIS PROCEEDING IS TERMINATED.

14482-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) v. R & R PRE-CAST ERECTORS LIMITED (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: A. E. GOLDEN AND D. WEST FOR THE APPLICANT, A. WAKELEY FOR THE RESPONDENT, R. KOSKIE, T. NEIL AND P. HITCHEN FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 16, 1968.

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5. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL EMPLOYEES OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA #8 SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. COUNSEL FOR THE APPLICANT AT THE HEARING EMPHASIZED THAT THE APPLICANT IS SEEKING CERTIFICATION FOR AN "ALL EMPLOYEE" UNIT. THE INTERVENER SUBMITS THAT THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ARE ALREADY COVERED BY A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT AND THE INTERVENER.

6. THERE WAS FILED WITH THE BOARD A COLLECTIVE AGREEMENT WHICH IS DATED AND WAS EXECUTED BY THE RESPONDENT AND THE INTERVENER ON SEPTEMBER 20TH, 1967. BY THE AGREEMENT, THE RESPONDENT RECOGNIZED THE INTERVENER AS THE EXCLUSIVE BARGAINING AGENT FOR ALL OF THE RESPONDENT'S EMPLOYEES IN THE GEOGRAPHIC AREA APPLIED FOR BY THE APPLICANT. THE DURATION CLAUSE PROVIDES THAT THE AGREEMENT IS TO BE EFFECTIVE FROM MAY 1ST, 1965 TO APRIL 30TH, 1968 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE.

7. COUNSEL FOR THE INTERVENER SUBMITS THAT SINCE THE COLLECTIVE AGREEMENT WAS ENTERED INTO BY THE PARTIES LESS THAN A YEAR PRIOR TO ITS EXPIRY DATE, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 39(1) OF THE LABOUR RELATIONS ACT, THE AGREEMENT IS DEEMED TO REMAIN IN OPERATION FOR A TERM OF ONE YEAR FROM THE DATE THAT IT COMMENCED TO OPERATE, NAMELY, SEPTEMBER 20TH, 1967. COUNSEL ARGUES THAT THE AGREEMENT IS NOT RETROACTIVE IN ITS EFFECT AND THAT THEREFORE ANY APPLICATION FOR CERTIFICATION WOULD ONLY BE TIMELY DURING A TWO-MONTH PERIOD PRIOR TO ITS EXPIRY DATE IN SEPTEMBER OF 1968. COUNSEL FOR THE APPLICANT SUBMITS THAT SINCE THE DURATION CLAUSE IN THE COLLECTIVE AGREEMENT IS FOR A TERM OF OVER ONE YEAR, SECTION 39(1) OF THE ACT HAS NO APPLICATION. COUNSEL ACCORDINGLY ARGUES THAT THE INSTANT APPLICATION, WHICH IS DATED APRIL 23RD, 1968, IS TIMELY AS IT WAS MADE WITHIN A TWO-MONTH PERIOD PRIOR TO THE EXPIRY DATE OF THE COLLECTIVE AGREEMENT ON APRIL 30TH, 1968.

8. SECTION 39(1) OF THE ACT READS AS FOLLOWS:

IF A COLLECTIVE AGREEMENT DOES NOT PROVIDE FOR ITS TERM OF OPERATION OR PROVIDES FOR ITS OPERATION FOR AN UNSPECIFIED TERM OR FOR A TERM OF LESS THAN ONE YEAR, IT SHALL BE DEEMED TO PROVIDE FOR ITS OPERATION FOR A TERM OF ONE YEAR FROM THE DATE THAT IT COMMENCED TO OPERATE.

9. IN THE ABSENCE OF ANY PROVISION TO THE CONTRARY, THE BOARD HAS INTERPRETED THE COMMENCEMENT DATE OF ANY COLLECTIVE AGREEMENT TO BE THE DATE ON WHICH IT WAS ENTERED INTO BY THE PARTIES (SEE R.C.A. VICTOR COMPANY LIMITED (1956) CANADIAN LABOUR LAW CASES, VOL. 1, 1944-1959, ¶18,045). IN THE INSTANT CASE, THERE IS NO PROVISION IN THE AGREEMENT ITSELF NOR ANY EXTRINSIC EVIDENCE THAT SUGGESTS THAT THE PARTIES ENVISAGED ANY OPERATIVE EFFECT OF THE AGREEMENT PRIOR TO ITS EXECUTION. IN THESE CIRCUMSTANCES, IN ACCORDANCE WITH SECTION 39(1) OF THE ACT, THE COLLECTIVE AGREEMENT IS DEEMED TO REMAIN IN EFFECT FOR A PERIOD OF ONE YEAR FROM SEPTEMBER 20TH, 1967, THE DATE ON WHICH IT COMMENCED TO OPERATE. THE APPLICATION OF THE APPLICANT THEREFORE IS UNTIMELY.

10. THE APPLICATION IS ACCORDINGLY DISMISSED.

14528-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. HOLLINN CONSTRUCTION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: L. A. MACLEAN AND A. R. McDOWELL FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: MAY 16, 1968.

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3. AT THE HEARING IN THIS MATTER COUNSEL FOR THE APPLICANT AMENDED THE DESCRIPTION OF THE BARGAINING UNIT FOR WHICH THE APPLICANT IS APPLYING FOR CERTIFICATION FROM AN "ALL EMPLOYEE" UNIT TO A UNIT COMPOSED OF ALL CARPENTERS AND CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

4. COUNSEL FOR THE RESPONDENT AT THE HEARING CLAIMED THAT THE LUMBER AND SAWMILL WORKERS UNION LOCAL 2693 GENERALLY REPRESENTED CARPENTERS AND THAT THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 1669 GENERALLY REPRESENTED LABOURERS IN THE KENORA AREA. COUNSEL SUBMITTED THAT SHOULD THE BOARD GRANT THE UNIT WHICH THE APPLICANT IS SEEKING A JURISDICTIONAL DISPUTE WOULD LIKELY RESULT BETWEEN LOCAL 2693 AND LOCAL 1669, PARTICULARLY OVER THE FORM WORK ON THE JOB UNDER CONSTRUCTION. COUNSEL CITED THE A. K. PENNER & SONS LTD. CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 493, IN SUPPORT OF HIS POSITION. IN THAT CASE THE BOARD STATED THAT WHERE A TRADE UNION WHICH NORMALLY ORGANIZES ALONG CRAFT LINES SEEKS AN "ALL EMPLOYEE" UNIT, ONE OF THE FACTORS TO BE CONSIDERED IS THE LIKELIHOOD OF THE GRANTING OF SUCH A UNIT LEADING TO A WORK ASSIGNMENT OR JURISDICTIONAL DISPUTE.

5. COUNSEL FOR THE APPLICANT REJECTED THE SUBMISSION OF COUNSEL FOR THE RESPONDENT THAT THE ISSUING OF A CERTIFICATE FOR THE TWO TRADES ON THE JOB, NAMELY CARPENTERS AND LABOURERS, WOULD LIKELY LEAD TO A JURISDICTIONAL DISPUTE. COUNSEL NOTED THAT BOTH LOCAL 2693 AND LOCAL 1669 FALL UNDER THE JURISDICTION OF THE APPLICANT, WHICH IS THE PARENT TRADE UNION. IN THESE CIRCUMSTANCES COUNSEL COULD NOT SEE ANY REASON WHY A WORK ASSIGNMENT DISPUTE WAS LIKELY TO OCCUR BETWEEN THE TWO LOCALS AS A RESULT OF THE BOARD ISSUING TO THE APPLICANT THE CERTIFICATE WHICH IT IS SEEKING. COUNSEL FURTHER SUBMITTED THAT BY CONFINING THE BOARD'S CERTIFICATE TO THE TRADES ON THE JOB, IT REMOVED THE POSSIBILITY OF WORK ASSIGNMENT DISPUTES DEVELOPING WITH OTHER CONSTRUCTION TRADES THAT WERE SUBSEQUENTLY EMPLOYED ON THE JOB. COUNSEL CITED THE BOARD'S DECISION IN THE WINTER & SON CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 889. IN THAT CASE, THE BOARD AGAIN EXPRESSED ITS

CONCERN THAT THE GRANTING OF "ALL EMPLOYEE" UNITS IN THE CONSTRUCTION INDUSTRY MIGHT WELL LEAD TO JURISDICTIONAL DISPUTES. THE BOARD WENT ON TO EXPRESS THE VIEW, HOWEVER, THAT WHERE A UNION SOUGHT A UNIT, OTHER THAN A CRAFT UNIT, THE UNIT SHOULD BE DESCRIBED IN TERMS OF THE TRADES ON THE JOB ON THE DATE OF THE MAKING OF THE APPLICATION. THE DECISION CLEARLY IMPLIES THAT BY SO CONFINING THE UNIT THE POSSIBILITY OF WORK ASSIGNMENT DISPUTES COULD BE AVOIDED.

6. COUNSEL FOR THE RESPONDENT HAS FAILED TO SATISFY THE BOARD THAT THE GRANTING OF A UNIT TO THE APPLICANT FOR THE TWO TRADES ON THE JOB IS LIKELY TO LEAD TO A JURISDICTIONAL DISPUTE. LET US ASSUME, FOR THE PURPOSE OF ARGUMENT ONLY, THAT A DISPUTE DOES DEVELOP BETWEEN LABOURERS AND CARPENTERS OVER THE ASSIGNMENT OF FORM WORK. IN OUR VIEW, THE ISSUING OF A CERTIFICATE TO THE APPLICANT FOR THE TWO TRADES IN NO WAY WOULD INCREASE THE LIKELIHOOD OF SUCH A DISPUTE ARISING. IN FACT, BECAUSE OF THE RELATIONSHIP OF BOTH LOCAL 2693 AND LOCAL 1669 TO THE APPLICANT, IF ANYTHING, IT SEEMS TO THE BOARD THAT A JURISDICTIONAL DISPUTE OVER FORM WORK IS MORE LIKELY TO BE AVOIDED. WE WOULD POINT OUT THAT IN THIS APPLICATION ONLY THE PARENT INTERNATIONAL UNION, AND NOT LOCAL 2693 OR LOCAL 1669, CAN ACQUIRE BARGAINING RIGHTS. STATED ANOTHER WAY, THE RESPONDENT WOULD ONLY BE OBLIGATED UNDER A CERTIFICATE ISSUED BY THE BOARD TO BARGAIN WITH THE APPLICANT.

7. IN ITS REPLY THE RESPONDENT SUBMITTED THAT THE APPLICANT WAS NOT ENTITLED UNDER ITS CONSTITUTION TO REPRESENT EMPLOYEES OTHER THAN CARPENTERS AND CARPENTERS' APPRENTICES AND THAT THE UNIT SHOULD ACCORDINGLY BE CONFINED TO THE SINGLE TRADE. COUNSEL FOR THE RESPONDENT MADE NO REPRESENTATIONS ON THIS MATTER AT THE HEARING. WE WOULD MENTION, HOWEVER, THAT IN THE CON-BRIDGE LIMITED CASE, BOARD FILE NO. 14212-67-R AND THE W. D. LAFLAMME GENERAL CONTRACTOR LIMITED CASE, BOARD FILE NO. 14327-67-R, THE BOARD FOUND THAT THE APPLICANT ADMITTED TO FULL MEMBERSHIP PERSONS IN THE CLASSIFICATION AFFECTED BY THIS APPLICATION.

8. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 7TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14534-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. FORENTA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND H. F. IRWIN.

APPEARANCES AT HEARING: DANIEL DEAN AND HARRY GRAHAM FOR THE APPLICANT, W. G. PHELPS AND G. K. PFLEDERER FOR THE RESPONDENT, DANIEL J. MURPHY FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER: MAY 30, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT KINCARDINE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THERE WAS FILED IN THIS MATTER A DOCUMENT IN OPPOSITION TO THIS APPLICATION SIGNED BY EIGHT EMPLOYEES OF THE RESPONDENT. IT IS CLEAR FROM THE EVIDENCE OF THE TWO EMPLOYEES WHO TESTIFIED CONCERNING THE ORIGATION AND PREPARATION OF THE DOCUMENT THAT THE PETITION WAS INSPIRED BY, AND ORIGINATED AT THE REQUEST OF, THE INDUSTRIAL COMMISSION OF THE TOWN OF KINCARDINE.

5. FOR REASONS SIMILAR TO THE REASONS GIVEN BY THE BOARD IN THE CHERNEY BROTHERS CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1965, P. 525, THE BOARD FINDS THAT THE OBJECTORS HAVE FAILED TO SATISFY THE BOARD CONCERNING THE ORIGATION OF THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION. THE BOARD ACCORDINGLY FINDS THAT THE DOCUMENT DOES NOT REPRESENT A VOLUNTARY SIGNIFICATION IN WRITING THAT SUCH EMPLOYEES DO NOT WISH TO BE REPRESENTED BY THE APPLICANT UNION.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 7TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN: MAY 30, 1968.

1. I DISSENT.

2. THE THOROUGH AND SEARCHING ENQUIRY WHICH THE BOARD CONDUCTS INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF A PETITION SIGNED BY EMPLOYEES IN A BARGAINING UNIT IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION IS TO ASCERTAIN IF THE EMPLOYER HAS PARTICIPATED THEREIN OR IF THERE HAS BEEN ANY INTIMIDATION OR COERCION WHICH CAUSED THE EMPLOYEES TO SIGN THE PETITION AGAINST THEIR WILL.

3. THE ENQUIRY IN THE INSTANT CASE DID NOT DISCLOSE A TITTLE OF EVIDENCE THAT THE EMPLOYER HAD PARTICIPATED IN THE ORIGINATION, PREPARATION OR CIRCULATION OF THE PETITION IN ANY MANNER, SHAPE OR FORM. JOSEPH WASTL, AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT, TESTIFIED UNDER OATH THAT HE HAD MADE A TELEPHONE CALL TO THE COMPANY MANAGER CONCERNING A PERSONAL MATTER AND INCIDENTALLY MENTIONED THE UNION. THE MANAGER INFORMED WASTL THAT THE EMPLOYER COULD NOT DISCUSS OR PARTICIPATE IN UNION MATTERS IN ANY WAY WHATSOEVER. MOREOVER, EVEN THE APPLICANT UNION ITSELF DOES NOT AS MUCH AS SUGGEST THAT THERE HAS BEEN EMPLOYER PARTICIPATION.

4. HOWARD GRIFFITH, ANOTHER EMPLOYEE IN THE BARGAINING UNIT, TESTIFIED THAT DANIEL J. MURPHY, COUNSEL FOR THE PETITIONERS, HAD ADDRESSED A MEETING OF EMPLOYEES HELD IN THE TOWN HALL ON MAY 4TH, 1968. MURPHY EXPLAINED THE CERTIFICATION PROCEDURE AND TOLD THE ADVANTAGES AND DISADVANTAGES OF INTERNATIONAL UNIONS AND SHOP UNIONS RESPECTIVELY BUT DID NOT EXPRESS PREFERENCE FOR ONE UNION OVER THE OTHER. MURPHY THEN LEFT THE MEETING SO THE EMPLOYEES COULD DISCUSS THE MATTER PRIVATELY AND SIGN THE PETITION HE HAD PREPARED IF THEY DESIRED TO DO SO. OF THE 10 EMPLOYEES PRESENT, 7 SIGNED THE PETITION. NO MEMBERS OF MANAGEMENT OR THE TOWN COUNCIL ATTENDED THE MEETING. NO EMPLOYEE WHO SIGNED THE PETITION HAS NOTIFIED THE BOARD THAT HE SIGNED UNDER DURESS OR BECAUSE OF INTIMIDATION OR COERCION ON THE PART OF ANY PERSON. CONSEQUENTLY, ON THE EVIDENCE BEFORE ME, I MUST CONCLUDE THAT THE SIGNATURES ON THE PETITION REPRESENT VOLUNTARY SIGNIFICATIONS IN WRITING THAT THESE EMPLOYEES DO NOT WISH THE APPLICANT UNION TO REPRESENT THEM AS THEIR BARGAINING AGENT.

5. IN HIS SUMMATION OF THE EVIDENCE, THE REPRESENTATIVE OF THE APPLICANT UNION REQUESTED THE BOARD TO GIVE NO WEIGHT TO THE PETITION BECAUSE OF THE ASSISTANCE GIVEN TO WASTL BY A MEMBER OR MEMBERS OF THE INDUSTRIAL COMMITTEE OF THE TOWN COUNCIL. I CANNOT ACCEPT THIS CONTENTION. IF A PERSON IS NOT AN EMPLOYER OR ACTING ON BEHALF OF AN EMPLOYER, HE IS FREE TO DISCUSS UNION MATTERS WITH EMPLOYEES AND TO TRY AND PERSUADE THEM TO JOIN OR NOT TO JOIN A TRADE UNION SO LONG AS THERE IS NO INTIMIDATION OR COERCION EXERCISED BY HIM. IN THE INSTANT CASE, THE COUNCIL MEMBER HAD MURPHY SPEAK TO WASTL ON THE TELEPHONE. THE OUTCOME OF THEIR TELEPHONE CONVERSATION WAS A DECISION TO HOLD A MEETING OF THE EMPLOYEES IN THE BARGAINING UNIT WHEN MURPHY WOULD BE PRESENT AND EXPLAIN THE CERTIFICATION PROCESS AS WELL AS THE BOARD'S RULES AND PROCEDURES IN RESPECT OF PETITIONERS WHO WISH TO EXPRESS

OPPOSITION TO THE APPLICATION FOR CERTIFICATION. WASTL DID NOT INSTRUCT MURPHY TO PREPARE THE PETITION. MURPHY DID SO ON HIS OWN VOLITION KNOWING THAT SUCH A DOCUMENT WAS NECESSARY IF THE EMPLOYEES AT THE MEETING DECIDED TO OPPOSE THE APPLICATION. THIS WAS QUITE A PROPER THING FOR HIM TO DO IN HIS PROFESSIONAL CAPACITY. INDEED, HE WOULD BE NEGLECTFUL IN SERVING HIS CLIENTS' INTERESTS IF HE FAILED TO PREPARE FOR SUCH EVENTUALITIES. JUST AS EMPLOYEES IN FAVOUR OF THE UNION SEEK AND ACCEPT GUIDANCE AND ASSISTANCE FROM THE UNION REPRESENTATIVE AND ARE SUPPLIED WITH APPLICATIONS FOR MEMBERSHIP AND RECEIPT FORMS BY HIM, THE EMPLOYEES WHO OPPOSE THE UNION MAY SEEK AND ACCEPT ADVICE AND ASSISTANCE FROM OTHER PERSONS SO LONG AS THE EMPLOYER IS NOT DIRECTLY OR INDIRECTLY INVOLVED IN THE PROCESS. WOULD THE UNION REPRESENTATIVE HAVE URGED THE BOARD TO DISMISS THE APPLICATION IF THE EMPLOYEES AT THE MEETING IN THE TOWN HALL HAD DECIDED TO SUPPORT THE UNION AND SIGNED APPLICATIONS FOR MEMBERSHIP AFTER MURPHY LEFT THE MEETING?

6. THE INSTANT CASE IS CLEARLY DISTINGUISHABLE FROM THE CHERNEY BROTHERS CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1965, P. 525, MENTIONED IN THE MAJORITY DECISION. IN THAT CASE, A SALESMAN IN THE EMPLOY OF THE COMPANY WAS THE PRIME MOVER IN THE ORIGINATION, PREPARATION AND CIRCULATION OF THE PETITION. IN THE INSTANT CASE, NO OFFICER, OFFICIAL OR EMPLOYEE OUTSIDE THE BARGAINING UNIT HAD ANY CONNECTION WITH THE PETITION WHATSOEVER.

7. IN THE WEYERHAEUSER CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY, 1964, P. 599, WHICH WAS MENTIONED IN THE CHERNEY BROTHERS CASE, SUPRA, THE EMPLOYEE IN THE BARGAINING UNIT WHO CIRCULATED THE PETITION HAD NO INFORMATION AS TO WHERE IT ORIGINATED OR WHO PREPARED IT. IN THE INSTANT CASE, MURPHY ORIGINATED AND PREPARED THE PETITION WHICH HE HAD EVERY RIGHT TO DO AS COUNSEL FOR THE EMPLOYEES.

8. WHEN ASKED BY THE BOARD WHO WOULD PAY HIS COUNSEL, WASTL STATED THAT THE MEMBER OF THE INDUSTRIAL COMMITTEE SAID THAT HE (WASTL) WOULD HAVE TO PAY MURPHY. WASTL SAID HE PLANNED TO GET CONTRIBUTIONS FROM THE OTHER EMPLOYEES WHO SIGNED THE PETITION.

9. FOR THESE REASONS, I WOULD HOLD THAT THE PETITION SUFFICIENTLY WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT UNION SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE WHICH I WOULD HAVE DIRECTED.

14556-68-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION No. 10 (APPLICANT) v. RONALDS-FEDERATED LIMITED (RESPONDENT) v. LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: IAN SCOTT, THOMAS B. OSBORNE, AND A. W. HALL FOR THE APPLICANT, J. W. HISSINK, J. P. MERRILL, AND D. CHURCHILL-SMITH FOR THE RESPONDENT AND NO ONE APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: MAY 23, 1968.

1. AT THE HEARING ON MAY 21ST, 1968, THE RESPONDENT RAISED A PRELIMINARY OBJECTION WITH RESPECT TO THE TIMELINESS OF THIS APPLICATION. THE APPLICANT HAD APPLIED ON FEBRUARY 14TH, 1968 (BOARD FILE NO. 14153-67-R) FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT SOMEWHAT DIFFERENT TO THAT INVOLVED IN THE PRESENT CASE. BY DECISION DATED FEBRUARY 29TH, 1968, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE COMPOSITION OF THE BARGAINING UNIT, THE LISTS OF EMPLOYEES FILED BY THE RESPONDENT, AND THE NATURE OF THE RESPONDENT'S OPERATION. THE REPORT OF THE EXAMINER WAS RELEASED TO THE PARTIES ON APRIL 23RD, 1968. THE APPLICANT SOUGHT LEAVE TO WITHDRAW THE APPLICATION, AND BY DECISION DATED MAY 1ST, 1968, THE BOARD REFUSED THE REQUEST TO WITHDRAW AND DISMISSED THE APPLICATION.

2. THE PRESENT APPLICATION WAS MADE ON MAY 6TH, 1968. NO VOTE HAD BEEN ORDERED BY THE BOARD IN THE FIRST APPLICATION, SO THAT THE MATHIAS V. OULLETTE CASE, ICCH, 18,026, CLS 76-485, DOES NOT APPLY. THERE ARE NO SPECIAL CIRCUMSTANCES IN THIS CASE TO CAUSE THE BOARD TO DEVIATE FROM ITS POLICY OF IMPOSING A BAR ONLY WHERE AN APPLICANT HAD GONE TO A VOTE AND LOST OR WHERE IT HAS REFUSED TO ACCEPT THE RESULT OF A VOTE. THE BOARD THEREFORE FINDS THE APPLICATION TO BE TIMELY.

3. SUBJECT TO THE RESERVATIONS ON BEHALF OF THE RESPONDENT HEREINAFTER SET OUT, THE APPLICANT AND THE RESPONDENT, WITH THE CONSENT OF THE BOARD, AGREED TO THE TRANSFER OF THE EXAMINER'S REPORT ISSUED PURSUANT TO THE DIRECTION OF THE BOARD DATED FEBRUARY 29TH, 1968, IN THE FIRST APPLICATION (BOARD FILE NO. 14153-67-R REFERRED TO ABOVE) - TO THIS FILE, AND TO ITS BEING ISSUED TO THE PARTIES IN THE USUAL MANNER AND BEING USED AND APPLIED AS IF MADE WITH RESPECT TO THE PRESENT APPLICATION IN ALL RESPECTS; AND THE BOARD SO DIRECTS. THE RESERVATIONS OF THE RESPONDENT ARE THAT IT WOULD ADD THE NAMES OF EMPLOYEES SWAN, HUDSON, AND ROLLS TO THE LIST OF EMPLOYEES IN THE REPORT HEADED "REGULAR FULL-TIME EMPLOYEE"; AND WOULD FURTHER AMEND THE REPORT TO SHOW THE FOLLOWING EMPLOYEES AS "TEMPORARY EMPLOYEES" IN THE PRESSROOM AT MAY 6TH, 1968: R. COLYER (ASSISTANT ROLLMAN); R. DANBROOK, PRESSROOM JOGGER; M. ELSTON, PRESSROOM JOGGER; B. GRAY, PRESSROOM JOGGER; R. PELLOW, PRESSROOM JOGGER TEMP.; R. THOMPSON, PRESSROOM JOGGER TEMP.

4. THE INTERVENER DID NOT APPEAR AT THE HEARING, AND THE BOARD FINDS THAT IT HAS NOT ESTABLISHED IT HAS A VALID INTEREST IN THESE PROCEEDINGS SO AS TO ENTITLE IT TO FURTHER PARTICIPATION THEREIN. THE MATTER THEREFORE IS REFERRED TO THE REGISTRAR FOR THE ISSUANCE TO THE APPLICANT AND THE RESPONDENT ONLY OF THE EXAMINER'S REPORT REFERRED TO HEREIN.

14569-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. LIDO PLASTERING CO. LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT HEARING: J. B. WATERMAN AND A. NEAL FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 24, 1968.

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3. THE APPLICANT AND THE RESPONDENT WERE INFORMED BY THE REGISTRAR PRIOR TO THE HEARING THAT THE BOARD CONVENED A CONFERENCE WHICH WAS HELD IN THE KING EDWARD SHERATON HOTEL ON MARCH 12TH AND 13TH, 1968. THE PURPOSE OF THE CONFERENCE WAS TO ENTERTAIN THE REPRESENTATIONS OF ALL INTERESTED PERSONS AS TO THE ADVISABILITY OF THE BOARD CHANGING THE PRESENT BOUNDARIES OF GEOGRAPHIC AREA #8. SOME TWENTY TRADE UNIONS, COUNCILS OF TRADE UNIONS AND EMPLOYER ORGANIZATIONS ATTENDED AT THE CONFERENCE AND MADE REPRESENTATIONS.

4. THE APPLICANT AND THE RESPONDENT WERE ALSO ADVISED BY THE REGISTRAR THAT FOLLOWING A CAREFUL STUDY OF ALL THE REPRESENTATIONS, THE BOARD PROPOSED, IN FUTURE APPLICATIONS FOR CERTIFICATION MADE UNDER THE CONSTRUCTION INDUSTRY SECTIONS OF THE ACT, TO CONSIDER GRANTING AN ENLARGED AREA, STILL TO BE KNOWN AS GEOGRAPHIC AREA #8. IN PROPOSING THE REVISED BOUNDARIES, THE BOARD PARTICULARLY TOOK INTO ACCOUNT PAST PRACTICE IN BARGAINING IN THE AREA, THE SUITABILITY OF BOUNDARY LINES RECOMMENDED, HAVING SPECIAL REGARD TO THE LOCATION OF MUNICIPALITIES IN THE AREA, AND, OF COURSE, THE DESIRES AS EXPRESSED BY THE BODIES REPRESENTED AT THE CONFERENCE. COUNSEL FOR THE APPLICANT AND COUNSEL FOR THE RESPONDENT ADVISED THE BOARD AT THE HEARING THAT THEY HAD NO REPRESENTATIONS TO MAKE CONCERNING THE PROPOSED NEW GEOGRAPHIC AREA #8.

5. THE BOARD ACCORDINGLY FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. AS A RESULT OF THE REPRESENTATIONS MADE TO THE BOARD AT THE ABOVE-MENTIONED CONFERENCE AND HAVING REGARD ALSO TO THE ENLARGEMENT OF GEOGRAPHIC AREA #8, THE BOARD PROPOSES TO CHANGE THE BOUNDARIES OF THE PRESENT GEOGRAPHIC AREA #9 BY THE ADDITION OF THE TOWNSHIP OF CAVEN AND BY THE DELETION OF A PART OF THE TOWNSHIP OF PICKERING IN

THE COUNTY OF ONTARIO. THE REVISED GEOGRAPHIC AREA #9 WOULD ENCOMPASS THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE). THE BOARD FURTHER PROPOSES TO ENLARGE GEOGRAPHIC AREA #10 BY THE ADDITION OF THE TOWNSHIPS OF SOUTH MONAGHAN AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND. THE REVISED GEOGRAPHIC AREA #10 WOULD THEREFORE ENCOMPASS THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND.

7. FOR SOME TIME THE BOARD HAS BEEN ISSUING CERTIFICATES IN THE CONSTRUCTION INDUSTRY FOR AN AREA ENCOMPASSING THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON. THE BOARD PROPOSES TO RECOGNIZE THE ABOVE DESCRIBED AREA AS AN ESTABLISHED GEOGRAPHIC AREA. THE BOARD AS WELL HAS ISSUED CERTIFICATES ENCOMPASSING ALL OF THE COUNTY OF WATERLOO WHICH IS AN ENLARGEMENT OF THE ORIGINAL GEOGRAPHIC AREA #6. THE BOARD PROPOSES TO RECOGNIZE THE EXPANDED AREA AS AN ESTABLISHED GEOGRAPHIC AREA FOR THE CONSTRUCTION INDUSTRY.

8. THE BOARD PROPOSES IN THE FUTURE TO RECOGNIZE ALL OF THE COUNTY OF DUFFERIN INCLUDING THE TOWN OF ORANGEVILLE AS A SEPARATE GEOGRAPHIC AREA AND ALL OF THE COUNTY OF GREY AS A SEPARATE GEOGRAPHIC AREA FOR THE CONSTRUCTION INDUSTRY. THE BOARD IN PAST CERTIFICATES HAS EXPANDED GEOGRAPHIC AREA #18 TO ENCOMPASS THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO. THIS AREA HENCEFORTH WILL BE RECOGNIZED AS AN ESTABLISHED GEOGRAPHIC AREA FOR THE CONSTRUCTION INDUSTRY.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 14TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14610-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. HAREB DEVELOPMENT LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MAY 28, 1968.

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5. BY A LETTER DATED MAY 17TH, 1968, WHICH WAS RECEIVED BY THE BOARD BY REGISTERED MAIL ON MAY 22ND, 1968, THE PRESIDENT OF THE RESPONDENT ADVISED THE BOARD THAT THE COMPANY WAS INCORPORATED FOR THE PURPOSE OF OWNING, CONSTRUCTING AND OPERATING THE BUILDING, WHICH IS THE PROJECT THAT IS THE SUBJECT OF THE INSTANT APPLICATION, AND THAT THE BUILDING WHEN IT IS COMPLETED WILL BE FOR THE COMPANY'S OWN USE. THE RESPONDENT FURTHER ADVISED THE BOARD THAT IT HAS SUBCONTRACTED ALL OF THE WORK ENTAILED IN THE CONSTRUCTION OF THE BUILDING WITH THE EXCEPTION OF A NUMBER OF LABOURERS WHO ARE EMPLOYED BY THE RESPONDENT FROM TIME TO TIME TO DO GENERAL CLEANING AND MAINTENANCE OF THE SITE DURING THE PERIOD OF CONSTRUCTION. IT IS THE LABOURERS IN THE EMPLOY OF THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE APPLICATION FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. THE RESPONDENT TAKES THE POSITION THAT IT IS NOT AN EMPLOYER WHO OPERATES IN THE CONSTRUCTION INDUSTRY AND THAT ACCORDINGLY THE APPLICANT HAS NO BASIS UPON WHICH TO EITHER MAKE THE APPLICATION OR TO ACQUIRE THE BARGAINING RIGHTS FOR THE EMPLOYEES CONCERNED.

6. HAVING REGARD TO THE BOARD'S DECISION IN THE TOPS MARINA MOTOR HOTEL CASE, 64 C.L.L.R., ¶16,004, O.L.R.B. MONTHLY REPORT, JANUARY 1964, P. 583; CANADIAN NIAGARA FALLS LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1966, P. 44, AND TRICONT PROJECTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1966, P. 121, THE BOARD FINDS THAT WITH RESPECT TO THE CONSTRUCTION ASPECTS OF ITS BUSINESS, THE RESPONDENT IS OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY AS DEFINED IN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT. THE BOARD FURTHER FINDS THAT THIS APPLICATION FOR CERTIFICATION IS ONE FALLING WITHIN SECTION 92 OF THE SAID ACT.

7. THE PRESIDENT OF THE RESPONDENT, IN HIS LETTER OF MAY 17TH, 1968, STATED THAT IT DID NOT APPEAR TO HIM THAT A HEARING WAS NECESSARY IN THIS MATTER. THE BOARD ACCORDINGLY HAS BASED ITS DECISION ON THE FACTS SET OUT IN HIS LETTER. SHOULD THE RESPONDENT DEEM IT ADVISABLE, HE DOES HAVE RECOURSE UNDER THE PROVISIONS OF SECTION 79(1).

8. THE BOARD ACCORDINGLY FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING (SEE LIDO PLASTERING CO. LTD. CASE, BOARD FILE NO. 14569-68-R REPORTED IN THIS ISSUE OF THE O.L.R.B. MONTHLY REPORT ON PAGE 180).

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 24TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION

77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14627-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) V. BEER PRECAST CONCRETE LIMITED (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MAY 31, 1968.

. . . .

2. THE APPLICANT HAS APPLIED FOR CERTIFICATION FOR ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT SAVE AND EXCEPT NON-WORKING FOREMEN AND THOSE ABOVE THE RANK OF NON-WORKING FOREMAN IN ESTABLISHED BOARD AREA No. 8.

3. BOTH THE RESPONDENT AND THE INTERVENER HAVE FILED WITH THE BOARD A COPY OF A COLLECTIVE AGREEMENT BETWEEN THESE TWO PARTIES EFFECTIVE MAY 1, 1968 AND OPERATIVE UNTIL APRIL 30, 1968. THE EMPLOYEES COVERED BY THIS COLLECTIVE AGREEMENT ARE THE SAME AS THOSE FOR WHOM THE APPLICANT IN THIS CASE SEEKS BARGAINING RIGHTS. SEE ARTICLE 3 OF THE SAID AGREEMENT.

4. BOTH THE RESPONDENT AND THE INTERVENER CONTEND THAT THE APPLICATION IS UNTIMELY AND BOTH SUBMIT A COPY OF A NOTICE FROM THE DEPUTY MINISTER OF LABOUR DATED MAY 2, 1968 APPOINTING A CONCILIATION OFFICER IN CONNECTION WITH THE RENEGOTIATION OF THE SAID AGREEMENT. THE APPLICANT WAS SERVED WITH A COPY OF THE REPLY, THE INTERVENTION, THE FACTS RELATING TO THE COLLECTIVE AGREEMENT AND A COPY OF THE LETTER DATED MAY 2, 1968 SIGNED BY THE DEPUTY MINISTER OF LABOUR. THE APPLICANT WAS ASKED FOR ITS COMMENTS WITH RESPECT TO THESE MATTERS WHICH COMMENTS WERE TO BE IN THE HANDS OF THE BOARD BY THURSDAY, MAY 30, 1968. AS OF MAY 31, 1968 NO COMMENTS HAVE BEEN RECEIVED.

5. THE PRESENT APPLICATION WAS FILED WITH THE BOARD ON MAY 17, 1968, SOME TIME AFTER THE APPOINTMENT OF THE CONCILIATION OFFICER. IN THESE CIRCUMSTANCES AND HAVING REGARD TO THE PROVISIONS OF SUBSECTION 2 OF SECTION 46 OF THE LABOUR RELATIONS ACT, THE BOARD FINDS THAT THIS APPLICATION IS UNTIMELY AND IT IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENTS - TERMINATION

14281-67-R: GRAHAM TRANSPORT LIMITED (APPLICANT) v. GENERAL TRUCK DRIVERS' UNION LOCAL NUMBER 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: JOHN O'DONOGHUE, HARRY GRAHAM FOR THE APPLICANT, I. J. THOMSON, W. JEFFERS FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER P. J. O'KEEFFE: MAY 29, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS PURSUANT TO SECTION 45(1) OF THE LABOUR RELATIONS ACT. THE RESPONDENT TRADE UNION WAS CERTIFIED BY THIS BOARD IN AUGUST, 1965 AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE APPLICANT IN AURORA, SAVE AND EXCEPT FOREMEN, DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN OR DISPATCHER, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK. THE PARTIES THEREAFTER ENTERED INTO A COLLECTIVE AGREEMENT DATED JANUARY 21ST, 1966 WHICH EXPIRED ON DECEMBER 31ST, 1967. THE APPLICANT ALLEGES THAT THE RESPONDENT FAILED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN IN ACCORDANCE WITH SECTION 40(1) OF THE ACT WHICH PROVIDES AS FOLLOWS:

EITHER PARTY TO A COLLECTIVE AGREEMENT MAY, WITHIN THE PERIOD OF TWO MONTHS BEFORE THE AGREEMENT CEASES TO OPERATE, GIVE NOTICE IN WRITING TO THE OTHER PARTY OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE RENEWAL, WITH OR WITHOUT MODIFICATIONS, OF THE AGREEMENT THEN IN OPERATION OR TO THE MAKING OF A NEW AGREEMENT.

THE RESPONDENT SUBMITTED THAT THE REQUIREMENT TO GIVE NOTICE UNDER THIS SECTION IS NOT MANDATORY BUT AT THE DISCRETION OF THE PARTIES.

2. IT IS NOT DISPUTED THAT NO WRITTEN NOTICE WAS GIVEN PURSUANT TO SECTION 40 WITHIN THE PERIOD OF TWO MONTHS BEFORE THE AGREEMENT CEASED TO OPERATE. THE EVIDENCE IS CLEAR HOWEVER THAT BY LETTER DATED FEBRUARY 9TH, 1968 THE RESPONDENT REQUESTED THE APPLICANT TO "RE-OPEN NEGOTIATIONS FOR THE PURPOSE OF NEGOTIATING A NEW COLLECTIVE AGREEMENT...". THE APPLICANT DID NOT REPLY TO THIS LETTER. FURTHER TO THIS THE RESPONDENT BY LETTER DATED MARCH 7TH, 1968 FORWARDED TO THE APPLICANT A COPY OF ITS PROPOSALS AND REQUESTED A MEETING TO DISCUSS SAME. THIS APPLICATION WAS MADE ON MARCH 11TH, 1968. COUNSEL FOR THE APPLICANT STATED THAT THE APPLICATION WAS MAILED TO THE BOARD PRIOR TO THE APPLICANT RECEIVING THE RESPONDENT'S LETTER DATED MARCH 7TH, 1968. THE APPLICANT HAD NOT HAD ANY DISCUSSIONS WITH THE RESPONDENT AFTER DECEMBER 31ST, 1967. MR. HARRY L. GRAHAM, PRESIDENT OF THE APPLICANT TESTIFIED THAT ON FEBRUARY 15TH, 1968

TWO EMPLOYEES OF THE APPLICANT ATTENDED AT HIS HOUSE AND REQUESTED ADVICE AS TO HOW THEY COULD GET OUT OF THE UNION. FOLLOWING THIS ON ADVICE FROM HIS SOLICITOR, MR. GRAHAM SUGGESTED TO THEM WHAT THE PROCEDURES WERE UNDER THE ACT. THE BOARD RECEIVED A LETTER DATED MARCH 15TH, 1968 SIGNED BY FIVE PERSONS PURPORTING TO BE EMPLOYEES OF THE APPLICANT IN SUPPORT OF THE APPLICATION. NONE OF THEM APPEARED AT THE HEARING TO GIVE EVIDENCE TO THE BOARD WITH RESPECT TO THE SAID LETTER.

3. THE FACTS IN THIS MATTER ARE NOT IN ISSUE. NEITHER PARTY GAVE NOTICE PURSUANT TO SECTION 40 OF THE ACT, THEREFORE, THE PREREQUISITE FOR THE DECLARATION HAS BEEN MET. WHILE IT IS AT THE DISCRETION OF THE PARTIES WHETHER NOTICE IS GIVEN UNDER SECTION 40 OF THE ACT, FAILURE TO DO SO BY A TRADE UNION GIVES RISE TO THE RIGHT OF AN EMPLOYER OR EMPLOYEES TO BRING AN APPLICATION TO THE BOARD UNDER SECTION 45 OF THE ACT. SECTION 45(1) OF THE ACT HOWEVER, DOES NOT CONFER A "RIGHT" UPON THE APPLICANT OTHER THAN THE RIGHT TO MAKE AN APPLICATION. THE RELIEF SOUGHT BY THE APPLICANT IS AT THE DISCRETION OF THE BOARD AND BEFORE THE BOARD WILL EXERCISE ITS DISCRETION IN FAVOUR OF AN APPLICANT IT MUST BE SATISFIED THAT THE TRADE UNION HAS FAILED TO TAKE STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THOSE EMPLOYEES IT REPRESENTS. SEE THE MOYER SAND CASE, O.L.R.B., MONTHLY REPORT, MARCH 1966, P. 913. THE BOARD IN A NUMBER OF CASES HAS CONSIDERED THE CIRCUMSTANCES IN WHICH IT WOULD EXERCISE ITS DISCRETION PROVIDED FOR IN SECTION 45, AND HAD STATED THAT THE DECISIONS RELATING TO SECTION 45(2) ARE RELEVANT IN THE CONSIDERATION OF CASES ARISING UNDER SECTION 45(1). SEE THE GRANT READY MIX LIMITED CASE, O.L.R.B., MONTHLY REPORT, DECEMBER 1967, AT PAGE 892. A STATEMENT AS TO THE PURPOSE OF SECTION 45 HAS BEEN SET OUT IN THE DOMINION STORES LIMITED CASE CCH CANADIAN LABOUR LAW REPORTER 1955-59 TRANSFER BINDER 16,047:

THE PURPOSE OF SECTION 43 [NOW SECTION 45] OF THE ACT IS TO PROTECT THE EMPLOYEES AND, IN A PROPER CASE, THE EMPLOYER AGAINST A UNION WHICH STAKES OUT A CLAIM TO REPRESENT CERTAIN EMPLOYEES AND THEN TAKES NO STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THOSE EMPLOYEES. HOWEVER, THE SECTION IS TO BE USED AS A SHIELD, NOT AS A SWORD. SECTION 43 SHOULD NOT BE USED TO PENALIZE A UNION WHICH HAS FAILED TO GIVE NOTICE UNDER SECTION 10 [NOW SECTION 11] OF THE ACT, BUT RATHER TO AFFORD AN OPPORTUNITY FOR AN INTERESTED PARTY TO BRING THAT FACT TO THE ATTENTION OF THE BOARD SO THAT THE BOARD MAY CALL UPON THE UNION TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS AS THE CASE MAY BE. IF NO SATISFACTORY EXPLANATION IS FORTHCOMING, THE BOARD WILL NO DOUBT IN MANY CASES TERMINATE THE BARGAINING RIGHTS OF THE UNION INSTANTANEOUSLY.

4. IN THE INSTANT CASE THE EVIDENCE DISCLOSES THAT WITHIN A PERIOD OF 60 DAYS PRIOR TO THE DATE OF THE APPLICATION THE RESPONDENT TOOK CERTAIN STEPS TO FURTHER NEGOTIATE WITH THE APPLICANT I.E., BY DELIVERING ITS LETTER OF INTENTION DATED FEBRUARY 9TH AND ITS SUBMISSION ON MARCH 7TH OF PROPOSALS COUPLED WITH A DEMAND FOR A MEETING WITH THE RESPONDENT. IT IS TO BE NOTED THAT THE FAILURE OF THE RESPONDENT TO ACT UNDER SECTION 40 DOES NOT BY ITSELF TERMINATE ITS BARGAINING RIGHTS, THESE CONTINUE UNTIL OTHERWISE DETERMINED, HENCE DESPITE THE LACK OF COMPLIANCE WITH SECTION 40 OF THE ACT IT CONTINUES TO REPRESENT THE EMPLOYEES IN THE BARGAINING UNIT AND IS NOT PRECLUDED ~~PER SE~~ FROM REQUESTING FURTHER NEGOTIATIONS WITH THE EMPLOYER ON THEIR BEHALF. THE QUESTION THAT THE BOARD MUST DETERMINE IS WHETHER THE RESPONDENT HAS SUFFICIENTLY CARRIED OUT ITS OBLIGATIONS AS BARGAINING AGENT FOR THE EMPLOYEES CONCERNED TO PROPERLY REPRESENT THEIR INTERESTS. A STATEMENT OF DESIRE IN SUPPORT OF THIS APPLICATION WAS FILED WITH THE BOARD BUT IT WAS NOT SUPPORTED BY ORAL TESTIMONY AS REQUIRED IN ORDER THAT CONSIDERATION BE GIVEN TO IT BY THE BOARD. NONE OF THE EMPLOYEES FILED A STATEMENT IN OPPOSITION TO THE APPLICATION. FURTHER THE BOARD HAS NO EVIDENCE THAT THE APPLICANT WAS PREJUDICED IN ANY WAY BY THE RESPONDENT'S POSITION IN THIS MATTER. ON THE OTHER HAND THE RESPONDENT DID NOT OFFER ANY EXPLANATION FOR ITS DELAY IN COMMENCING NEGOTIATIONS EITHER TO RENEW THE AGREEMENT OR FOR A NEW AGREEMENT BETWEEN THE EXPIRY DATE OF THE AGREEMENT AND THE LETTER SENT ON FEBRUARY 9TH AND FROM THAT DATE TO MARCH 7TH WHEN ITS PROPOSALS WERE SENT TO THE APPLICANT. IT THEREFORE MUST RELY ON THESE ACTIONS THEMSELVES AS BEING A SUFFICIENT EXPLANATION TO THE BOARD IN ITS DETERMINATION OF WHETHER ITS DISCRETION SHOULD BE EXERCISED IN FAVOUR OF THE APPLICANT.

5. IN THE KINGSTON TERMINAL RESTAURANT LTD. CASE, 1960 CCH CANADIAN LABOUR LAW REPORTER ¶16,163; C.L.S. 76-671, THE BOARD STATED:

THE MANIFEST OBJECT OF SECTION 38 [NOW SECTION 40] IS TO FACILITATE OR PROMOTE COLLECTIVE BARGAINING FOR THE PURPOSE OF RENEWING OR NEGOTIATING A NEW COLLECTIVE AGREEMENT.

IN THE INSTANT CASE THE PARTIES DID NOT PROVIDE FOR ANY MEANS IN THE AGREEMENT FOR ITS RENEWAL AND ACCORDINGLY IT WAS QUITE OPEN FOR EITHER OF THE PARTIES TO FOLLOW THE PROVISIONS OF SECTION 40 OF THE ACT IN ORDER TO CARRY ON FURTHER NEGOTIATIONS. AS WAS SAID IN THE DOMINION STORES CASE [SUPRA] SECTION 43 [NOW 45] SHOULD NOT BE USED TO PENALIZE A UNION WHICH HAS FAILED TO GIVE NOTICE UNDER SECTION 10 [NOW SECTION 11] OF THE ACT.. THIS STATEMENT IN OUR OPINION IS RELEVANT TO THE CIRCUMSTANCES OF THE PRESENT CASE. BY ITS LETTER OF FEBRUARY 9TH THE RESPONDENT GAVE NOTICE TO THE APPLICANT OF ITS INTENT TO ENTER INTO FURTHER NEGOTIATIONS TO WHICH THE APPLICANT MADE NO REPLY. THIS WAS FOLLOWED BY A SUBMISSION OF PROPOSALS BY THE RESPONDENT ON MARCH 7TH COINCIDENTAL WITH THE APPLICANT FORWARDING ITS APPLICATION TO THE BOARD WHICH WAS RECEIVED BY THE BOARD ON MARCH 11TH. ALTHOUGH THE RESPONDENT IS OPEN TO CRITICISM IN ALLOWING ANY TIME TO LAPSE IN THESE

CIRCUMSTANCES THE ACTIONS THAT IT DID TAKE MUST BE SAID TO BE STEPS TAKEN TO FURTHER THE INTERESTS OF THE EMPLOYEES IT REPRESENTS WITHIN A REASONABLE TIME AFTER THE EXPIRY DATE OF THE COLLECTIVE AGREEMENT AND BEFORE THE DATE OF THIS APPLICATION. IT CANNOT TRULY BE SAID THAT THE RESPONDENT "STAKED OUT A CLAIM" WITH RESPECT TO PERSONS IT FAILED TO REPRESENT. THE PURPOSE AND INTENT OF SECTION 45 WOULD NOT BE SERVED IN THESE CIRCUMSTANCES BY TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. WE ARE THEREFORE OF THE OPINION THAT THE BOARD SHOULD NOT EXERCISE ITS DISCRETION TO ISSUE THE DECLARATION SOUGHT BY THE APPLICANT.

6. THE APPLICATION IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER J.E.C. ROBINSON:

MAY 29, 1968.

I DISSENT FROM THE DECISION OF THE MAJORITY DISMISSING THE APPLICATION OF GRAHAM TRANSPORT LIMITED TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT UNION PURSUANT TO SECTION 45(1) OF THE LABOUR RELATIONS ACT.

THE PORTION OF SECTION 45(1) WHICH IS RELEVANT TO THE FACTS OF THIS CASE PROVIDES AS FOLLOWS:-

"IF A TRADE UNION FAILS TO GIVE THE EMPLOYER NOTICE...UNDER SECTION 40 AND NO SUCH NOTICE IS GIVEN BY THE EMPLOYER, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT, AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT."

SECTION 40(1) PROVIDES AS FOLLOWS:-

"EITHER PARTY TO A COLLECTIVE AGREEMENT MAY, WITHIN THE PERIOD OF TWO MONTHS BEFORE THE AGREEMENT CEASES TO OPERATE, GIVE NOTICE IN WRITING TO THE OTHER PARTY OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE RENEWAL, WITH OR WITHOUT MODIFICATIONS, OF THE AGREEMENT THEN IN OPERATION OR TO THE MAKING OF A NEW AGREEMENT".

THERE IS LITTLE DISPUTE WITH RESPECT TO THE FACTS OF THIS CASE. THE RESPONDENT TRADE UNION WAS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE APPLICANT COMPANY (WITH CERTAIN NAMED EXCEPTIONS) IN AUGUST OF 1965. THE COMPANY AND TRADE UNION THEN BARGAINED FOR AND ENTERED INTO A COLLECT AGREEMENT DATED JANUARY 21ST, 1966, EXPIRING DECEMBER 31ST, 1967, WHICH MADE NO PROVISION IN IT FOR ITS RENEWAL. IN THIS LATTER RESPECT, THE AGREEMENT IS UNUSUAL. NEITHER PARTY GAVE NOTICE TO THE OTHER OF ITS DESIRE TO BARGAIN WITHIN THE PERIOD OF TWO MONTHS BEFORE THE AGREEMENT CEASED TO OPERATE, AS PROVIDED FOR BY SECTION 40 OF THE LABOUR RELATIONS ACT.

SUBSEQUENTLY, APPROXIMATELY ONE HUNDRED DAYS AFTER THE TRADE UNION WAS ENTITLED TO GIVE NOTICE TO THE COMPANY OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE MAKING OF A NEW AGREEMENT, IT WROTE TO THE APPLICANT REQUESTING IT TO "RE-OPEN NEGOTIATIONS FOR THE PURPOSE OF NEGOTIATING A NEW COLLECTIVE AGREEMENT..." THE APPLICANT STATED THAT APPROXIMATELY ONE MONTH LATER, AND BEFORE IT RECEIVED ANY ADDITIONAL CORRESPONDENCE FROM THE TRADE UNION, IT COMMENCED THIS APPLICATION.

SECTION 45 OF THE LABOUR RELATIONS ACT IS BROKEN DOWN INTO TWO DISTINCT SUB-SECTIONS. SECTION 45(1) PROVIDES FOR TERMINATION FOR FAILURE TO GIVE NOTICE. (EMPHASIS ADDED). SECTION 45(2) PROVIDES FOR TERMINATION FOR FAILURE TO BARGAIN. (EMPHASIS ADDED)

IN ADDITION, SECTION 45(1) IS ITSELF BROKEN DOWN INTO TWO DISTINCT AND SEPARATE SITUATIONS WHEN THE BOARD MAY EXERCISE ITS RIGHTS OF TERMINATION:-

- (A) IF A TRADE UNION FAILS TO GIVE THE EMPLOYER NOTICE UNDER SECTION 11 WITHIN SIXTY DAYS FOLLOWING CERTIFICATION;
- (B) IF A TRADE UNION FAILS TO GIVE NOTICE UNDER SECTION 40 AND NO SUCH NOTICE IS GIVEN BY THE EMPLOYER.

IT IS WITHIN THE LATTER PORTION OF SECTION 45(1) THAT THE FACTS OF THIS CASE SQUARELY FALL. IT WOULD SEEM, ALSO, THAT THERE HAVE BEEN NO OTHER CASES WITH SIMILAR FACTS DECIDED BY THIS BOARD WITH REGARD TO THIS PORTION OF SECTION 45(1).

MY COLLEAGUES IN THE MAJORITY DECISION HAVE QUOTED A PASSAGE FROM THE BOARD DECISION IN THE KINGSTON TERMINAL RESTAURANT LTD. CASE, 1960, C.C.H. CANADIAN LABOUR LAW REPORTER 16,163; C.L.S. 76-671. MAY I, TOO, QUOTE A PASSAGE FROM THE SAME CASE.

"IT IS A TRITE PRINCIPLE OF STATUTORY INTERPRETATION THAT A STATUTE MUST BE CONSTRUED IN ACCORDANCE WITH THE INTENT OF THE LEGISLATIVE BODY WHICH ENACTED IT. THIS PRINCIPLE IS STATED IN SUCCINCT LANGUAGE BY DU PARCQ, L.J. AT P. 579 IN BUTCHER VS. POOLE CORPORATION [1942] 2 ALL E.R. 512, AS FOLLOWS:

IT IS, OF COURSE, IMPOSSIBLE TO CONSTRUE PARTICULAR WORDS IN AN ACT OF PARLIAMENT WITHOUT REFERENCE TO THEIR CONTEXT, AND TO THE WHOLE TENOR OF THE ACT."

IF THE ABOVE PRINCIPLE OF STATUTORY INTERPRETATION IS AS TRITE AS IS SUGGESTED, IS IT NOT SIGNIFICANT THAT THE LEGISLATIVE BODY SAW FIT TO DIFFERENTIATE BETWEEN TERMINATION FOR FAILURE TO GIVE NOTICE, AND

TERMINATION FOR FAILURE TO BARGAIN, BY PUTTING SUCH REMEDY IN TWO SEPARATE AND DISTINCT SUB-SECTIONS? So too, is it not significant that the legislative body saw fit to differentiate between termination if a trade union fails to give the employer notice under section 11 within sixty days following certification and termination if a trade union fails to give notice under section 40 and no such notice is given by the employer.

WITH GREAT DEFERENCE TO MY COLLEAGUES IN THE MAJORITY, IT IS MY RESPECTFUL OPINION THAT THEY ARE ADJUDICATING UPON THE FACTS OF THIS CASE AS IF IT WERE A CASE UNDER SECTION 45(2) OF THE LABOUR RELATIONS ACT. IT IS NOT. WHY ELSE WOULD THEY BE REFERRING TO THE PERIOD OF 60 DAYS IN PARAGRAPH 4 OF THE MAJORITY DECISION. NOWHERE IN THE PORTION OF THE SECTION UNDER CONSIDERATION IS THIS PERIOD REFERRED TO. IT IS, HOWEVER, REFERRED TO IN THE SUB-SECTION DEALING WITH TERMINATION FOR FAILURE TO BARGAIN.

IT IS CONCEDED THAT IN BOTH SECTION 45(1) DEALING WITH TERMINATION FOR FAILURE TO GIVE NOTICE AND SECTION 45(2) DEALING WITH TERMINATION FOR FAILURE TO BARGAIN, THE BOARD IS GIVEN A DISCRETION AS TO WHETHER TO TERMINATE THE BARGAINING RIGHTS IMMEDIATELY, CONDUCT A VOTE AMONG THE EMPLOYEES IN THE BARGAINING UNIT OR DISMISS THE APPLICATION. AS WITH ALL ADMINISTRATIVE TRIBUNALS, HOWEVER, THIS IS A DISCRETION WHICH MUST BE EXERCISED JUDICIOUSLY, AND NOT ON MERE WHIM OR FANCY.

IN THE MOYER SAND CASE, O.L.R.B. MONTHLY REPORT, MARCH, 1966, P. 913, THE BOARD IN CONSIDERING SECTION 45(2), TERMINATION FOR FAILURE TO BARGAIN, STATED:-

"IT IS CLEAR THAT THE BASIC PREREQUISITES FOR THE MAKING OF A DECLARATION BY THE BOARD UNDER SECTION 45(2) HAVE BEEN MET IN THAT THE RESPONDENT FAILED TO COMMENCE BARGAINING WITHIN SIXTY DAYS FROM THE GIVING OF NOTICE. THE MAKING OF A DECLARATION TERMINATING BARGAINING RIGHTS, HOWEVER, LIES IN THE DISCRETION OF THE BOARD AND BEFORE THE BOARD WILL EXERCISE ITS DISCRETION IN FAVOUR OF MAKING A DECLARATION IT MUST BE SATISFIED THAT THE TRADE UNION CONCERNED HAS FAILED TO TAKE STEPS WITHIN A REASONABLE TIME TO FORWARD THE INTERESTS OF THE EMPLOYEES IT REPRESENTS. (SEE WALMER TRANSPORT COMPANY CASE, (1953) CCH CANADIAN LABOUR LAW REPORTS, TRANSFER BINDER 1949-1954, 17,062, C.L.S. 76-404; OLIVER LUMBER COMPANY CASE, O.L.R.B. MONTHLY REPORT, APRIL 1963, P. 280; STARK TRUCK SERVICE (LONDON) LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1964, P. 150). THE BOARD, THEREFORE, AFFORDS TO THE TRADE UNION

OR ANY OTHER INTERESTED PARTY AN OPPORTUNITY TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS. WHERE THE EXPLANATION IS SATISFACTORY, THE BOARD IN THE EXERCISE OF ITS DISCRETION WILL DECLINE TO ISSUE A DECLARATION. IF, HOWEVER, AS A RESULT OF THE CONDUCT OF THE TRADE UNION A REASONABLE DOUBT EXISTS AS TO THE WISHES OF THE EMPLOYEES, THE BOARD WILL TEST THEIR DESIRES BY DIRECTING THE TAKING OF A REPRESENTATION VOTE."

THE BOARD UNDER SECTION 45(2) DEALING WITH TERMINATION FOR FAILURE TO BARGAIN AFFORDS THE TRADE UNION AN OPPORTUNITY TO GIVE AN EXPLANATION FOR THE DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS, IN THE EXERCISE OF ITS DISCRETION. DOES IT NOT FOLLOW THAT THE BOARD UNDER SECTION 45(1) DEALING WITH TERMINATION FOR FAILURE TO GIVE NOTICE, SHOULD AFFORD THE TRADE UNION AN OPPORTUNITY TO GIVE AN EXPLANATION FOR ITS FAILURE TO GIVE NOTICE? IF SUCH AN EXPLANATION IS NOT OFFERED FOR SUCH FAILURE TO GIVE NOTICE, SHOULD NOT THE BOARD EXERCISE ITS DISCRETION AGAINST THE TRADE UNION?

IN THE WALMER TRANSPORT CO. LTD. CASE, (1953) 2 CLS 76-404, THE BOARD STATED:

"THE PURPOSE OF THE SECTION IS TO ENSURE THAT A UNION WHICH HAS ACQUIRED BARGAINING RIGHTS ON BEHALF OF EMPLOYEES WILL ACTIVELY PURSUE AND FORWARD THEIR INTERESTS IN BARGAINING WITH THEIR EMPLOYER. IF THE UNION FAILS IN THIS RESPECT, THE EMPLOYEES MAY SEEK TO RID THEMSELVES OF THAT UNION SO THAT THEY MAY BE FREE TO SELECT ANOTHER BARGAINING AGENT OR TO ENGAGE IN INDIVIDUAL BARGAINING WITH THE EMPLOYER WHICH MIGHT OTHERWISE BE RENDERED DIFFICULT OR EVEN IMPOSSIBLE BY SECTION 53 [NOW SECTION 59] OF THE ACT. IN THE CIRCUMSTANCES SET FORTH IN THE SECTION, THE EMPLOYER MAY ALSO SEEK A DECLARATION TERMINATING BARGAINING RIGHTS OF THE UNION. HIS PURPOSE IN MAKING SUCH A DECLARATION MAY BE THAT HE WISHES TO ALTER RATES OF WAGES OR OTHER WORKING CONDITIONS WHICH HE IS INHIBITED FROM DOING BECAUSE OF THE PROVISIONS OF SECTION 53; OR HE MAY WISH TO AVOID THE RISK OF PROSECUTION SHOULD HE REFUSE TO BARGAIN WITH A TRADE UNION THAT HAS 'SLEPT ON ITS RIGHTS' FOR A LONG PERIOD OF TIME WHERE HE IS CONVINCED THAT THE UNION NO LONGER REPRESENTS HIS EMPLOYEES; OR HE MAY WISH TO ACCORD RECOGNITION TO ANOTHER UNION WHICH HAS SATISFIED

HIM THAT IT DOES NOW REPRESENT HIS EMPLOYEES, A COURSE WHICH HE IS PROHIBITED FROM ADOPTING SO LONG AS THE BARGAINING RIGHTS OF THE OTHER UNION SUBSIST."

SIMILARLY IN THE SOLE CASE, (1949) D.L.S. 7-2105 THE BOARD STATED:-

"A (TERMINATION) PROCEEDING IS A TYPE OF REPRESENTATIVE PROCEEDING, THAT IS, IT HAS AS ITS OBJECTIVE THE DETERMINATION OF A QUESTION OF REPRESENTATION. AN APPLICATION FOR A [DECLARATION TERMINATING BARGAINING RIGHTS] IS, IN EFFECT, A REQUEST THAT THE BOARD EXAMINE INTO AND DETERMINE THE QUESTION WHETHER THE EMPLOYEES AFFECTED BY THE APPLICATION DESIRE TO CONTINUE TO BE REPRESENTED BY THEIR...BARGAINING AGENT. THE BASIS UPON WHICH [A DECLARATION TERMINATING BARGAINING RIGHTS] MAY BE GRANTED IS THAT 'A BARGAINING AGENT NO LONGER REPRESENTS...THE EMPLOYEES IN [THE BARGAINING UNIT]'"

WHAT ARE THE PRINCIPLES WHICH GIVE RISE TO THE WAY IN WHICH THE BOARD WILL EXERCISE ITS DISCRETION IN TERMINATION APPLICATIONS GENERALLY? IT IS CLEAR FROM THE BOARD'S AUTHORITIES THAT IN APPLICATIONS UNDER SECTION 45, THE UNION WILL BE CALLED UPON TO GIVE AN EXPLANATION FOR ITS DELAY IN COMMENCING OR CONTINUING NEGOTIATIONS AS THE CASE MAY BE.

IN ONE OF ITS LEADING CASES ON SECTION 45, IN CONSIDERING THE EXPLANATION GIVEN BY THE UNION, THE BOARD STATED IN DOMINION STORES LIMITED CASE, CCH CANADIAN LABOUR LAW REPORTER 1955-59 TRANSFER BINDER 16,047;

"IF NO SATISFACTORY EXPLANATION IS FORTHCOMING, THE BOARD WILL NO DOUBT IN MANY CASES TERMINATE THE BARGAINING RIGHTS OF THE UNION INSTANTANEOUSLY. IF A REASONABLE DOUBT ARISES AS TO THE DESIRES OF THE EMPLOYEES AT THAT STAGE, THE BOARD MAY TEST THOSE DESIRES BY DIRECTING A REPRESENTATION VOTE. HOWEVER, WHERE THE TARDINESS OF THE UNION IS EXCUSABLE AND ESPECIALLY WHERE IT STILL COMMANDS THE ALLEGIANCE OF A MAJORITY OF THE EMPLOYEES, THE APPLICATION SHOULD BE DISMISSED."

IN THE PRESENT CASE, WHAT WAS THE EXPLANATION OF THE UNION FOR ITS TARDINESS? THERE WAS ABSOLUTELY NO EXPLANATION OFFERED BY THE UNION WHATSOEVER. WITH GREAT RESPECT, I FIND IT COMPLETELY INCOMPREHENSIBLE THAT MY COLLEAGUES SHOULD DISREGARD THIS FACT IN THE LIGHT OF THE PREVIOUS PRONOUNCEMENTS OF THIS BOARD.

WAS THERE ANY DOUBT WHICH AROSE IN THE PROCEEDINGS AS TO THE DESIRES OF THE EMPLOYEES? DID THE UNION STILL COMMAND THE ALLEGIANCE OF THE MAJORITY OF THE EMPLOYEES? THESE LATTER CONSIDERATIONS WERE OF GREAT SIGNIFICANCE IN THE DOMINION STORES LIMITED CASE [SUPRA].

MAY I COMPARE THE INSTANT CASE WITH THE DOMINION STORES LIMITED CASE IN THAT REGARD.

IN THE PRESENT CASE, AN OFFICER OF THE COMPANY TESTIFIED THAT HE WAS APPROACHED BY TWO OF HIS EMPLOYEES WHO ADVISED HIM THAT NONE OF THE EMPLOYEES DESIRED TO BE REPRESENTED BY THE RESPONDENT UNION. SUBSEQUENTLY, THE BOARD RECEIVED A STATEMENT OF DESIRE BEARING THE SIGNATURES OF ALL EMPLOYEES THEN IN THE BARGAINING UNIT, TO TERMINATE THE BARGAINING RIGHTS OF THE UNION. THE MAJORITY OF THE BOARD PLACE NO SIGNIFICANCE ON THIS DOCUMENT WHATSOEVER.

CONTRAST THIS WITH THE DOMINION STORES LIMITED CASE WHERE THE RESPONDENT UNION FILED AFFIRMATIONS OF MEMBERSHIP ON BEHALF OF MORE THAN 55% OF THE EMPLOYEES IN THE BARGAINING UNIT. IN THAT CASE THE BOARD PLACED GREAT SIGNIFICANCE UPON THESE AFFIRMATIONS FILED BY THE UNION. SURELY THE FILINGS OF SIMILAR DOCUMENTS BY THE UNION (AS OPPOSED TO THE FILING BY THE EMPLOYEES) DOES NOT MAKE THESE FILINGS SACROSANCT.

UNION INVARIABLY IN THEIR DEFENCE TO SECTION 45 PROCEEDINGS QUOTE FROM THE DOMINION STORES LIMITED CASE AND SAY "THE SECTION IS TO BE USED AS A SHIELD, NOT AS A SWORD". MAY I SUGGEST, HOWEVER, THAT THAT STATEMENT WAS NEVER INTENDED TO SHIELD THE UNION FROM TARDINESS, LACK OF DILIGENCE AND LASSITUDE IN THE REPRESENTATION OF ITS MEMBERS.

IN CONCLUSION, I WOULD FIND THAT THE BARGAINING RIGHTS OF THE UNION IN THIS CASE SHOULD BE TERMINATED FORTHWITH.

14469-68-R: JACK CHAPMAN AND EDWARD BOUGHEN ET. AL. (APPLICANTS) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT) V. CURVPLY WOOD PRODUCTS (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: ERIC RICHARD LOVEKIN FOR THE APPLICANT; M. J. SOMERVILLE, J. C. HORAN, N. RUDISI FOR THE RESPONDENT; H. A. MALCOLMSON FOR THE INTERVENER.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER J. E. C. ROBINSON: MAY 27, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT, PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT IS THE BARGAINING AGENT FOR ALL EMPLOYEES OF CURVPLY WOOD PRODUCTS AT ORONO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

3. THERE WAS SUBMITTED IN SUPPORT OF THIS APPLICATION A DOCUMENT BEARING THE SIGNATURES OF MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH THE RESPONDENT IS THE BARGAINING AGENT. AT THE HEARING OF THIS MATTER, THE BOARD CONDUCTED ITS USUAL INQUIRY INTO THE ORIGINATION AND CIRCULATION OF THESE DOCUMENTS. THE EVIDENCE IS IN PART THAT JACK CHAPMAN, A MATERIAL MAN IN THE EMPLOY OF THE INTERVENER FOR ABOUT 13 YEARS, WAS CONCERNED ABOUT THE UNION AND SPOKE TO MR. KLASNER, THE VICE-PRESIDENT OF THE INTERVENER, ON MONDAY, APRIL 15TH. MR. KLASNER TOLD CHAPMAN THAT HE HAD HELPED TO GET THE UNION IN IT WAS UP TO HIM TO GET IT OUT AND SUGGESTED THAT HE CONSULT A LAWYER. ON APRIL 17TH CHAPMAN CALLED HIS LAWYER AND BOTH HE AND EDWARD BOUGHEN, WHO ALSO TESTIFIED IN THIS MATTER, ATTENDED AT HIS OFFICE ON THE MORNING OF APRIL 18TH. CHAPMAN EARLIER THAT MORNING HAD TELEPHONED HIS FOREMAN AND ADVISED HIM HE WAS TAKING THE DAY OFF TO ATTEND TO SOME BUSINESS BUT DID NOT EXPLAIN IT FURTHER TO HIM. HE SAID THAT HE HAD PREVIOUSLY TAKEN TIME OFF WITHOUT ANY EXPLANATION TO THE FOREMAN. HE WAS NOT PAID FOR THIS DAY OFF WORK.

4. THE SOLICITOR PREPARED THE PETITION AND ADVISED THEM TO TAKE IT AROUND TO THE EMPLOYEES AND ASK THEM TO READ THE HEADING AND TO SIGN IT IF THEY SO DESIRED. THE SOLICITOR ADVISED THEM THAT THEY COULD OBTAIN THE EMPLOYEES' SIGNATURES IN THE PLANT, AT HOME, OR ELSEWHERE. AFTER LEAVING THE SOLICITOR'S OFFICE THEY RETURNED TO THE PLANT KNOWN AS THE "SOUTH PLANT" AT ABOUT 9:30 A.M., AND THEREAFTER CIRCULATED THE DOCUMENT. SOME OF THE EMPLOYEES SIGNED IT WHILE ON THEIR BREAKS AND AT NOON HOUR, SOME AT NIGHT AT HOME, BUT A CONSIDERABLE NUMBER OF THEM SIGNED IN THE PLANT, DURING WORKING HOURS WHILE THEY WERE WORKING, SOME OF THOSE SIGNED IT AT THE SOUTH SHIPPING DOOR, OTHERS IN THE LUNCH ROOM AND MAINTENANCE ROOM. CHAPMAN ASSERTED THAT THERE WERE NO FOREMEN OR MEMBERS OF MANAGEMENT PRESENT WHEN HE OBTAINED ANY OF THE SIGNATURES NOR DID ANY OF THEM SEE HIM DURING THAT DAY. ALL OF THE SIGNATURES WERE OBTAINED ON APRIL 18TH. THEY ALSO WENT TO THE NEW PLANT KNOWN AS THE "NORTH PLANT" AND OBTAINED ABOUT 8 SIGNATURES OUTSIDE THAT PLANT BUT THEY DID NOT GO INTO THIS PLANT UNTIL AFTER 5:00 P.M. WHEN THEY APPROACHED TWO EMPLOYEES WITH THE PETITION WHO REFUSED TO SIGN. CHAPMAN STATED THAT THEY DID NOT GO INTO THE NORTH PLANT DURING WORK HOURS AS THEY COULD HAVE BEEN SEEN MUCH EASIER THERE THAN AT THE SOUTH PLANT. NONE OF THE EMPLOYEES WENT FROM ONE PLANT TO THE OTHER TO SIGN THE DOCUMENT. AFTER THE SIGNATURES WERE OBTAINED, BOTH HE AND BOUGHEN TOOK THE FOLLOWING DAY

OFF, DROVE TO TORONTO AND DELIVERED THE PETITION TO THE BOARD. AS WELL, CHAPMAN MAILED A COPY TO THE BOARD. CHAPMAN DID NOT INFORM HIS FOREMAN THAT HE WAS TAKING THIS DAY OFF NOR WAS HE PAID FOR THE DAY.

5. EDWARD BOUGHEN TESTIFIED THAT HE IS A LEAD HAND ON THE SANDERS AND HAS BEEN EMPLOYED BY THE INTERVENER FOR ABOUT 5 YEARS. ON THE 18TH OF APRIL HE ADVISED HIS FOREMAN THAT HE WOULD NOT BE AT WORK THAT DAY BUT DID NOT GIVE ANY REASONS TO HIM FOR HIS ABSENCE. HE ACCOMPANIED CHAPMAN THROUGHOUT THE DAY AND WITNESSED HALF OF THE SIGNATURES WHICH APPEAR ON THE DOCUMENT. THERE ARE APPROXIMATELY 70 - 75 EMPLOYEES AT THE SOUTH PLANT AND THE BALANCE AT THE NORTH PLANT. HE WAS IN THE SOUTH PLANT THAT DAY AND SAW THAT THE FOREMEN WERE AROUND BUT HE DID NOT SAY ANYTHING TO THEM NOR DID HE DISCUSS THE PETITION WITH ANYONE FROM MANAGEMENT. HE ALSO TOOK THE FOLLOWING DAY OFF WORK AFTER AGAIN ADVISING HIS FOREMAN THAT MORNING AND WENT WITH CHAPMAN TO TORONTO WITH THE PETITION. HE SAID THAT SOME OF THE SIGNATURES WERE OBTAINED AT BREAK PERIODS, SOME OUTSIDE THE PLANT, SOME IN THE PLANT IN THE SHIPPING ROOM. WHILE HE WAS ABSENT FROM WORK, ANOTHER EMPLOYEE TOOK OVER HIS REGULAR JOB. HE DID NOT TALK TO HIS FOREMAN THAT DAY AND COULD NOT SAY WHETHER THE FOREMAN SAW HIM IN THE PLANT.

6. WHAT THE BOARD IS SEEKING AMONG OTHER THINGS, IS REASONABLE ASSURANCE FROM PERSONS WITH FIRST HAND KNOWLEDGE THAT THE APPLICATION HAS NOT BEEN SPONSORED OR INITIATED BY MANAGEMENT, THAT THE PETITION IN SUPPORT OF THE APPLICATION REFLECTS THE VOLUNTARY DESIRES OF THE EMPLOYEES AND THAT MANAGEMENT HAS NOT IMPROPERLY INFLUENCED THEM IN ANY WAY. THE RESPONDENT SUBMITS THAT SINCE THE APPLICANTS WERE IN THE PLANT DURING WORKING HOURS CIRCULATING THE PETITION, THAT MANAGEMENT WAS AWARE OF IT AND THE EMPLOYEES WOULD, IN ANY EVENT, ASSUME THIS FACT AND ACCORDINGLY BE IMPROPERLY INFLUENCED IN SIGNING THE DOCUMENT. THEREFORE, THE DOCUMENT WOULD NOT RECORD THE VOLUNTARY DESIRES OF THOSE EMPLOYEES.

7. WE FIND NOTHING IMPROPER IN THE MANNER IN WHICH THE DOCUMENT ORIGINATED OR WAS PREPARED AND THERE IS NO SUGGESTION THAT MANAGEMENT WAS EVEN AWARE OF THE ACTIONS OF ITS EMPLOYEES. THE ONLY QUESTIONABLE AREA FOR OUR CONSIDERATION IS THE MANNER IN WHICH THE SIGNATURES WERE OBTAINED ON THE DOCUMENT. THE EVIDENCE OF THE APPLICANTS RAISES CERTAIN SUSPICIONS THAT THE PRESENCE OF THE TWO MEN IN THE PLANT ON APRIL 18TH WAS OBSERVED BY AT LEAST A FOREMAN, BUT IT IS CLEAR THAT NO CONVERSATIONS TOOK PLACE BETWEEN THEM NOR WERE ANY MEMBERS OF MANAGEMENT PRESENT WHEN ANY OF THE SIGNATURES WERE OBTAINED. IN THE PYROTENAX OF CANADA LTD. CASE, 60 CLLC 865, C.L.S. 76-685:

"HOWEVER IT IS ALSO CONTENDED THAT BECAUSE THE DOCUMENTS WERE PREPARED ON COMPANY TIME, WITH COMPANY EQUIPMENT AND WERE CIRCULATED DURING WORKING HOURS, THESE CIRCUMSTANCES

INVALIDATE THE APPLICATION. IT IS OUR CONSIDERED OPINION THAT SUCH ACTIVITIES PER SE HAVE NEVER BEEN REGARDED BY THE BOARD AS INVALIDATING EITHER APPLICATIONS FOR CERTIFICATION AND OBJECTIONS THERETO OR APPLICATIONS FOR 'DECERTIFICATION'. THERE MUST BE ADDITIONAL EVIDENCE WHICH, TAKEN IN CONJUNCTION WITH SUCH ACTIVITIES, REASONABLY LEADS TO THE CONCLUSION THAT THERE HAS BEEN COMPANY SUPPORT OR SOME IMPROPER INFLUENCE BY THE COMPANY SUCH THAT IT CAN BE SAID THAT THE DOCUMENT OR DOCUMENTS DO NOT REFLECT THE VOLUNTARY DESIRES OF THE EMPLOYEES."

8. THERE WAS NO ATTEMPT MADE TO IMPUGN THE TESTIMONY OF THE APPLICANTS AND THERE IS NOTHING IN THEIR TESTIMONY TO INFER THAT THEY WERE NOT CREDIBLE WITNESSES AND THE RESPONDENT CALLED NO EVIDENCE TO ESTABLISH ANY IMPROPRIETY BY ANYONE. WE ACCEPT THE EVIDENCE OF THE APPLICANTS WHO WITNESSED ALL THE SIGNATURES ON THE DOCUMENT AND FIND THAT MANAGEMENT HAS NOT INHIBITED OR IMPROPERLY INFLUENCED THE EMPLOYEES FROM VOLUNTARILY EXPRESSING THEIR WISHES IN THIS MATTER.

9. HAVING REGARD FOR ALL THE EVIDENCE AND REPRESENTATIONS PRESENTED TO THE BOARD IN THIS MATTER, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF CURVPLY WOOD PRODUCTS IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT UNION ON APRIL 29TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT UNION UNDER SECTION 43(3) OF THE ACT.

10. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF CURVPLY WOOD PRODUCTS AT ORONO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES: MAY 27, 1968.

AFTER GIVING CAREFUL CONSIDERATION TO ALL THE EVIDENCE, I FIND THAT THE DOCUMENTS PRESENTED IN SUPPORT OF THE APPLICANT'S PETITION FOR TERMINATION OF BARGAINING RIGHTS WERE SIGNED BY EMPLOYEES UNDER CIRCUMSTANCES WHICH WOULD INDICATE TO EMPLOYEES THAT THE PETITIONERS ENJOYED THE BLESSING OF MANAGEMENT WITH RESPECT TO THE CIRCULATION OF THE PETITION. VOLUNTARY SIGNATURES BY THE EMPLOYEES UNDER CONDITIONS REVEALED BY THE EVIDENCE WOULD, IN MY VIEW, BE UNLIKELY AND I WOULD THEREFORE HAVE DISMISSED THE APPLICATION.

14580-68-R: SCARBOROUGH PUBLIC LIBRARY BOARD (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MAY 13, 1968.

1. THE APPLICANT HAS APPLIED PURSUANT TO THE PROVISIONS OF SECTION 45 OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE APPLICANT IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT. THE APPLICANT IN ITS APPLICATION STATES THAT ON THE DATE THE APPLICATION WAS MADE THERE WERE NO EMPLOYEES IN THE BARGAINING UNIT. APPARENTLY, THE APPLICANT HAS CONTRACTED OUT THE JANITORIAL WORK FORMERLY CARRIED ON BY THE EMPLOYEES REPRESENTED BY THE RESPONDENT.

2. IT SEEMS TO US THAT, IN GENERAL, THE LANGUAGE USED BY THE BOARD IN THE SOLE CASE (1949) D.L.S. 7-2105 (WHICH WAS ADOPTED BY THE BOARD IN THE BURNS & CO. LIMITED CASE, 61 C.L.L.C. 953) IS APPLICABLE TO THE FACTS OF THIS CASE. THE LANGUAGE OF THAT CASE ADAPTED TO THE PRESENT LEGISLATION IS AS FOLLOWS:

A [TERMINATION] PROCEEDING IS A TYPE OF REPRESENTATION PROCEEDING, THAT IS, IT HAS AS ITS OBJECTIVE THE DETERMINATION OF A QUESTION OF REPRESENTATION. AN APPLICATION FOR [A DECLARATION TERMINATING BARGAINING RIGHTS] IS, IN EFFECT, A REQUEST THAT THE BOARD EXAMINE INTO AND DETERMINE THE QUESTION WHETHER THE EMPLOYEES AFFECTED BY THE APPLICATION DESIRE TO CONTINUE TO BE REPRESENTED BY THEIR . . . BARGAINING AGENT. THE BASIS UPON WHICH [A DECLARATION TERMINATING BARGAINING RIGHTS] MAY BE GRANTED IS THAT "A BARGAINING AGENT NO LONGER REPRESENTS . . . THE EMPLOYEE IN [THE BARGAINING UNIT]". THAT CRITERION, WE SUGGEST, PRESUMES THE

EXISTENCE OF THE UNIT, OR TO STATE IT IN ANOTHER WAY, PRESUMES THE PRESENCE IN THE UNIT OF EMPLOYEES WHO MAY SIGNIFY WHETHER OR NOT THEY WISH THE BARGAINING AGENT CONCERNED TO CONTINUE TO REPRESENT THEM. IN THE PRESENT INSTANCE THAT CONDITION DOES NOT OBTAIN.

3. HAVING REGARD TO THE CIRCUMSTANCES AND PRINCIPLES OUTLINED ABOVE, WE ARE OF OPINION THAT THE APPLICATION HAS FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND PURSUANT TO THE PROVISIONS OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THIS APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENTS - STRIKE UNLAWFUL

14604-68-U: ELLIS DON LIMITED (APPLICANT) V. RICHARD BIRCHALL, ROBERT FRANK, IELIKS BYTOW, DAVID LAUR, MICHEL DIGUGLIELMO, GUNTHER MACKAY, JOHN WEIGMAN, ROGER HARMSWORTH, GEORGE NIKON, HELMUT ONDERKA, ARVIDS BUMEISTER, PETER CATTERSON, ROY PUDMER, GERARD KLEUSKEMS, WILLIAM PEARCE, ANDREW LAMB, CHARLES OAKLEY, WAYNE COLLINS, DOUGLAS THOMSON, HECTOR THOMSON, JOHN HEIDMAN, RALPH BAILEY, JAMES PRICE, JURGEN SCHUMACHER, MATTHEW HARBISON, PETER VEEL, ALFRED MARSON, HAROLD LEITCH, ALFONS VANDERJUEGD, GARFIELD DUKESHIRE, TED TESIORISKI, HENRY PIGNAL, JULIAN TUTZER, CHRISTIANUS KOOLEN, GEORGE ZIELDAUER, PHILLIP POPOV, CAMERON SIMMON, PETER RUEHL, HELMUT REITKNECHT, EDWARD SQUIRE, SIEGFRIED NIMZ, GEORGE BROWN, CARL LEADER, FREDERICK MAYER, LOUIS CRUSE, JOHN SIMSONS, OLIVER HOUGHTON, GORDON HOLCOMBE, EDWIN MAYER, EDWIN ALLEN, DAVID ARMITAGE, THOMAS BROOKS, FRANKLIN KIEFER, ADOLPH KIEFER, ANRIAN VEREYKEN, ALBERT REID, PERCY WHITE, FREDERICK WRIGHT, JOHN BAUER, LESLIE MCCONNELL, GEOFFREY SAVAGE AND ERWIN LECHNER (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: D. J. MCKILLOP AND J. WHALEN FOR THE APPLICANT AND R. KOSKIE AND K. JACKSON FOR THE RESPONDENTS.

DECISION OF THE BOARD: MAY 28, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT THE NAMED RESPONDENTS ENGAGED IN AN UNLAWFUL STRIKE.
2. HAVING REGARD TO THE REPRESENTATIONS OF COUNSEL FOR THE APPLICANT AT THE HEARING, THE APPLICATION IS DISMISSED IN SO FAR AS IT RELATES TO RICHARD BIRCHALL AND CAMERON SIMMON.
3. THE RESPONDENTS ARE BRICKLAYERS EMPLOYED BY THE APPLICANT ON ITS UNIVERSITY OF WESTERN ONTARIO STUDENT HOUSING PROJECT AND ARE COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE GENERAL & MASONRY CONTRACTORS' SECTION OF THE LONDON & DISTRICT CONSTRUCTION ASSOCIATION (OF WHICH THE APPLICANT IS A MEMBER) AND BRICKLAYERS',

MASONS' AND PLASTERERS' INTERNATIONAL UNION OF AMERICA, LOCAL NUMBER 5 ONTARIO, HEREINAFTER REFERRED TO AS "LOCAL #5". ARTICLE 12 OF THAT COLLECTIVE AGREEMENT PROVIDES AS FOLLOWS:

ARTICLE 12 - NO STRIKE OR LOCK-OUT

AS LONG AS THIS AGREEMENT CONTINUES TO OPERATE, NO EMPLOYEE BOUND BY THIS AGREEMENT SHALL STRIKE AND NO EMPLOYER BOUND BY THIS AGREEMENT SHALL LOCK-OUT SUCH A EMPLOYEE.

HOWEVER, THIS ARTICLE DOES NOT DENY THE EMPLOYEE THE RIGHT TO REFUSE TO CROSS ANY LEGAL PICKET LINES, AND THE EMPLOYER AGREES THAT NO ACTION WILL BE TAKEN AGAINST THE UNION OR ANY EMPLOYEE FOR REFUSING TO CROSS SUCH LEGAL PICKET LINES.

SIMILARLY, THE EMPLOYER SHALL NOT BE DEEMED TO HAVE CONTRAVENED THIS ARTICLE IF A JOB OR PROJECT IS CLOSED DOWN BY ACTION BEYOND HIS CONTROL. IN ANY EVENT, NOTICE OF SUCH ACTIONS BY EITHER PARTY SHALL BE GIVEN PRIOR TO SUCH ACTION TAKING PLACE.

4. ON MONDAY, MAY 6TH, 1968, THE RESPONDENTS WERE SCHEDULED TO WORK ON THE AFOREMENTIONED PROJECT. THEY APPEARED AT THE PROJECT BUT DID NOT CROSS A PICKET LINE WHICH HAD BEEN ESTABLISHED BY SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL UNION 473, HEREINAFTER REFERRED TO AS "LOCAL #473". PICKETS WERE CARRYING SIGNS READING: "SHEET METAL WORKERS LOCAL 473 LEGAL STRIKE". AS OF THE DATE OF THE HEARING IN THIS CASE, MAY 21ST, 1968, THE PICKET LINE WAS STILL BEING MAINTAINED AND NO EMPLOYEES OF THE APPLICANT, INCLUDING THE NAMED RESPONDENTS, WERE AT WORK ON THE PROJECT.

5. LOCAL #473 HAD BEEN NEGOTIATING WITH THE LONDON SHEET METAL CONTRACTORS ASSOCIATION FOR THE RENEWAL OF A COLLECTIVE AGREEMENT WHICH CEASED TO OPERATE ON APRIL 30TH, 1968. BENNETT & WRIGHT LIMITED WAS A PARTY TO THIS COLLECTIVE AGREEMENT. THIS COMPANY IS A SUB-CONTRACTOR ON THE APPLICANT'S STUDENT HOUSING PROJECT. IT WAS EMPLOYEES OF BENNETT & WRIGHT LIMITED WHO ESTABLISHED THE PICKET LINE AT THE PROJECT ON MAY 6TH.

6. AT THAT TIME CONCILIATION PROCEEDINGS UNDER THE LABOUR RELATIONS ACT WERE COMPLETED FOR, BY LETTER, DATED APRIL 22ND, 1968, THE MINISTER OF LABOUR HAD INFORMED LOCAL #473 AND THE EMPLOYERS' ASSOCIATION THAT HE WAS NOT GOING TO APPOINT A BOARD OF CONCILIATION. THUS, UNDER SECTION 54(2)(B) OF THE LABOUR RELATIONS ACT, THE SHEET METAL EMPLOYEES OF BENNETT & WRIGHT LIMITED WOULD HAVE BEEN ENTITLED

TO STRIKE AFTER THE ELAPSE OF FOURTEEN DAYS FROM THE RELEASE OF THE MINISTER'S DECISION NOT TO APPOINT A CONCILIATION BOARD. DEPENDING ON WHETHER THE NOTICE FROM THE MINISTER WAS DELIVERED OR SENT BY REGISTERED MAIL OR ORDINARY MAIL (AND WE HAVE NO EVIDENCE BEFORE US ON THIS POINT) IT WOULD APPEAR THAT THE STRIKE BY LOCAL #473 WAS PREMATURE BY ONE OR TWO DAYS.

7. ON THE OTHER HAND, IT IS CLEAR THAT THE APPLICANT COMPANY AND LOCAL #473 BELIEVED THAT THE PICKET LINE WAS A LEGAL PICKET LINE. IT IS ALSO CLEAR THAT THE RESPONDENTS IN THIS CASE HAD EVERY REASON TO BELIEVE THAT THE PICKET LINE WAS LEGAL. FURTHER, THE EVIDENCE IS THAT NO COURT PROCEEDINGS WERE LAUNCHED IN CONNECTION WITH THE PICKET LINE OR THE ACTIVITIES THEREON AND NO GRIEVANCE HAS BEEN LODGED BY BENNETT & WRIGHT LIMITED RESPECTING THE PICKET LINE OR THE ACTIONS OF THE EMPLOYEES IN GOING ON STRIKE. IT IS ALSO CLEAR THAT EITHER ON MAY 7TH OR MAY 8TH THE WORK STOPPAGE BY THE SHEET METAL WORKERS BECAME A LAWFUL STOPPAGE UNDER THE TERMS OF THE LABOUR RELATIONS ACT. THE APPLICANT MADE NO ATTEMPT IN THESE PROCEEDINGS TO SHOW THAT THE PICKET LINE ESTABLISHED BY LOCAL #473 WAS ILLEGAL.

8. THE RESPONDENTS CONTEND THAT BY VIRTUE OF ARTICLE 12 OF THE AGREEMENT BETWEEN THE APPLICANT AND LOCAL #5, WHICH AGREEMENT WAS BINDING ON THE RESPONDENTS, THE APPLICANT IS, IN EFFECT, ESTOPPED FROM BRINGING THE PRESENT APPLICATION. COUNSEL FOR THE APPLICANT ARGUED THAT NEITHER HIS CLIENT NOR LOCAL #5 HAD THE RIGHT TO NEGOTIATE SUCH A CLAUSE INTO THE COLLECTIVE AGREEMENT BECAUSE IT WAS IN DIRECT CONFLICT WITH SECTION 54 OF THE LABOUR RELATIONS ACT. THIS ARGUMENT WAS NOT SUPPORTED BY REFERENCE TO ANY LEGAL AUTHORITIES. ASSUMING, BUT WITHOUT DECIDING, THAT THE APPLICANT IS CORRECT, WE ARE NEVERTHELESS FACED WITH A SITUATION WHEREIN THE RESPONDENTS MUST BE PRESUMED TO HAVE REFUSED TO CROSS THE PICKET LINE ON MONDAY, MAY 6TH, WITH THE KNOWLEDGE THAT THE APPLICANT HAD IN FACT SIGNED A DOCUMENT SAYING THAT IT WOULD NOT TAKE ANY ACTION AGAINST THEM IN SUCH CIRCUMSTANCES. THE BOARD'S DECISIONS MAKE IT QUITE CLEAR THAT IT HAS A DISCRETION AS TO WHETHER IT WILL OR WILL NOT ISSUE A STRIKE OR LOCK-OUT DECLARATION. HAVING REGARD TO ALL THE CIRCUMSTANCES OF THIS CASE, WE ARE NOT PREPARED TO GRANT THE DECLARATION SOUGHT BY THE APPLICANT.

9. THE APPLICATION IS ACCORDINGLY DISMISSED.

14643-68-U: THE ALGOMA STEEL CORPORATION, LIMITED (APPLICANT) V. JAMES ARDITO ET AL. (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: C. A. MORLEY AND R. W. FORBES FOR THE APPLICANT, NO ONE FOR THE RESPONDENTS.

DECISION OF THE BOARD: MAY 30, 1968.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR A DECLARATION THAT THE 132 RESPONDENTS NAMED IN SCHEDULE "A" ATTACHED TO THE APPLICATION ENGAGED IN AN UNLAWFUL STRIKE.
2. NONE OF THE NAMED RESPONDENTS APPEARED AT THE BOARD HEARING ON MAY 30TH, 1968 NOR WERE THEY REPRESENTED AT THE HEARING BY THEIR COLLECTIVE BARGAINING AGENT, LOCAL UNION 2251 OF THE UNITED STEELWORKERS OF AMERICA. OF THE 108 NAMED RESPONDENTS WHO FILED REPLIES, 82 STATED THAT THEY WERE UNABLE TO ATTEND THE HEARING IN TORONTO BECAUSE OF THE EXPENSE TO THEM. NONE OF THEM, NOR THEIR BARGAINING AGENT, HOWEVER, REQUESTED THAT THE HEARING BE HELD IN SAULT STE. MARIE, THE LOCATION OF THE APPLICANT'S OPERATIONS.
3. BECAUSE OF THE FACT THAT SERVICE OF THE APPLICATION HAD NOT BEEN ABLE TO BE AFFECTED UPON THE NAMED RESPONDENTS, JACOBUS ROMYN, ANDREW KENDRICK, ELMER MELCHER, AND OLIVER OSBORNE, COUNSEL FOR THE APPLICANT AT THE OUTSET OF THE HEARING WITHDREW THE APPLICATION OF THE APPLICANT AS IT RELATED TO THESE RESPONDENTS.
4. DAVID RAMSAY, THE ASSISTANT SUPERINTENDENT OF THE APPLICANT'S COLD MILL DEPARTMENT, GAVE THE FOLLOWING TESTIMONY. THE APPLICANT AND LOCAL UNION 2251 OF THE UNITED STEELWORKERS OF AMERICA ARE PARTIES TO A CURRENT COLLECTIVE AGREEMENT WHICH IS EFFECTIVE FROM AUGUST 1ST, 1966 TO JULY 31ST, 1969, A COPY OF WHICH WAS FILED WITH THE BOARD. ARTICLE 16.01 PROVIDES THERE SHALL BE NO STRIKES OR LOCKOUTS DURING THE TERM OF THE AGREEMENT. ALL OF THE NAMED RESPONDENTS WERE EMPLOYED IN THE COLD MILL DEPARTMENT ON THE RELEVANT DATES. BY ARTICLE 7.04, THE EMPLOYEES OF THE COLD MILL DEPARTMENT ARE COVERED BY THE PROVISIONS OF THE COLLECTIVE AGREEMENT.
5. THE APPLICANT ASSIGNED EMPLOYEES OF THE COLD MILL DEPARTMENT IN THE CLASSIFICATION OF CATCHER TO BE PENDANT CONTROL CRANE OPERATORS. THE CATCHERS REFUSED TO PERFORM THE ASSIGNMENT AND FILED A GRIEVANCE UNDER THE TERMS OF THE COLLECTIVE AGREEMENT, WHICH GRIEVANCE WAS BEING PROCESSED BY THE APPLICANT. AS A RESULT OF THE REFUSAL OF THE CATCHERS TO PERFORM THE WORK ASSIGNED TO THEM, THE APPLICANT SUSPENDED FOUR EMPLOYEES ON MAY 20TH, 1968. AT APPROXIMATELY 5:00 P.M. ON MAY 21ST, 1968, ALL UNITS OF THE COLD MILL DEPARTMENT WERE SHUT DOWN BY THE CREWS. THE EMPLOYEES CONCERNED GATHERED IN THE FLOOR AREA, AND THROUGH A SPOKESMAN, INQUIRED OF MEMBERS OF MANAGEMENT OF THE APPLICANT WHEN THE FOUR SUSPENDED EMPLOYEES WOULD BE RECALLED TO WORK. THE EMPLOYEES WERE INFORMED THAT A MEETING WAS SCHEDULED BETWEEN MEMBERS OF MANAGEMENT OF THE APPLICANT AND OFFICIALS OF LOCAL 2251 FOR 10:30 A.M. ON MAY 22ND FOR THE PURPOSE OF DEALING WITH THE SUSPENSIONS. THE EMPLOYEES, HOWEVER, ASKED FOR AN IMMEDIATE DECISION. THE APPLICANT ADVISED THEM THAT THEIR WORK STOPPAGE WAS UNLAWFUL AND TOLD THEM TO RETURN TO THEIR WORK. WHEN THE EMPLOYEES DID NOT RETURN TO WORK, THE APPLICANT COMMUNICATED THE SITUATION TO A UNION OFFICIAL WHO CAME TO THE MILL AT APPROXIMATELY 6:00 P.M. THE UNION OFFICIAL DIRECTED EMPLOYEES TO RETURN TO THEIR JOBS WHICH THEY DID AT ABOUT 7:00 P.M.

6. AT THE MEETING WHICH WAS HELD BETWEEN MEMBERS OF MANAGEMENT OF THE APPLICANT AND OFFICIALS OF LOCAL UNION 2251 AT 10:30 A.M. ON MAY 22ND, THE APPLICANT AGREED TO RECALL THE FOUR SUSPENDED EMPLOYEES IMMEDIATELY WITHOUT FURTHER PENALTIES AND NOT TO IMPOSE ANY PENALTY ON THOSE EMPLOYEES ON THE SHIFT FROM 3:00 P.M. TO 11:00 P.M. WHO HAD ENGAGED IN THE WORK STOPPAGE BETWEEN 5:00 P.M. AND 7:00 P.M. THE PREVIOUS DAY. THE UNION FOR ITS PART AGREED THAT THE EMPLOYEES ASSIGNED TO OPERATE THE PENDANT CONTROL CRANE WOULD PERFORM THIS ASSIGNMENT (PRE-SUMABLY SUBJECT TO THE DISPOSITION OF THE GRIEVANCE WHICH HAD BEEN FILED RELATING TO THIS MATTER). AN EMPLOYEE REPRESENTING THE EMPLOYEES OF THE COLD MILL DEPARTMENT WAS IN ATTENDANCE AT THE MEETING. THIS REPRESENTATIVE AGREED TO MEET WITH THE EMPLOYEES AND CONVEY TO THEM THE AGREEMENT THAT HAD BEEN ARRIVED AT THAT MORNING. WITH THE PERMISSION OF THE APPLICANT, THE DEPARTMENT'S OPERATIONS WERE SHUT DOWN FOR TEN MINUTES AT 12:30 P.M. FOR THIS PURPOSE. THE REPRESENTATIVE, IN FACT, DID INFORM THE ASSEMBLED EMPLOYEES OF THE SETTLEMENT.

7. ALL OF THE PERSONS ON PAGE ONE OF SCHEDULE "A" ATTACHED TO THE APPLICATION WERE SCHEDULED AND DID REPORT FOR WORK ON THE 7:00 A.M. TO 3:00 P.M. SHIFT ON MAY 22ND. AT APPROXIMATELY 1:00 P.M., SUBSEQUENT TO THE MEETING WITH THEIR REPRESENTATIVE AT 12:30 P.M., ALL OF THESE EMPLOYEES, WITHOUT REQUESTING OR RECEIVING PERMISSION FROM THE APPLICANT, WALKED OFF THE JOB. WITH TWO EXCEPTIONS, NONE OF THEM HAD RETURNED TO WORK PRIOR TO THE BOARD HEARING. ALL OF THE PERSONS ON PAGE TWO OF SCHEDULE "A" WERE SCHEDULED AND DID REPORT FOR WORK ON THE 3:00 P.M. TO 11:00 P.M. SHIFT ON MAY 22ND. SHORTLY AFTER THE BEGINNING OF THE SHIFT, HOWEVER, ALL OF THESE EMPLOYEES, WITHOUT REQUESTING OR RECEIVING PERMISSION FROM THE APPLICANT, WALKED OFF THE JOB. WITH THE EXCEPTION OF TWO EMPLOYEES, NONE HAD RETURNED TO WORK PRIOR TO THE BOARD HEARING. ALL OF THE EMPLOYEES ON PAGE THREE OF SCHEDULE "A" WERE SCHEDULED TO REPORT FOR WORK ON THE NIGHT SHIFT COMMENCING AT 11:00 P.M. ON MAY 22ND. SOME OF THEM REPORTED FOR WORK, BUT NOT IN SUFFICIENT NUMBERS TO ESTABLISH FUNCTIONAL WORK CREWS. THE APPLICANT THEREUPON ASSIGNED THOSE EMPLOYEES WHO HAD REPORTED FOR WORK TO OTHER JOBS IN THE SHIPPING DEPARTMENT. ALL OF THE EMPLOYEES REFUSED TO ACCEPT THE WORK ASSIGNMENTS AND WITHOUT REQUESTING OR RECEIVING THE PERMISSION OF THE APPLICANT, WALKED OFF THE JOB. WITH THE EXCEPTION OF SEVEN OF THESE EMPLOYEES, NONE OF THEM HAD RETURNED TO WORK PRIOR TO THE BOARD HEARING.

8. IN LIGHT OF THE EVIDENCE THAT ALL OF THE NAMED RESPONDENTS WALKED OFF THE JOB IN THE MANNER IN WHICH THEY DID ON MAY 22ND, THE BOARD FINDS THAT THE RESPONDENTS ENGAGED IN A STRIKE WITHIN THE MEANING OF SECTION 1(1)(i) OF THE LABOUR RELATIONS ACT. FURTHER, HAVING REGARD TO THE FACT THAT THE STRIKE TOOK PLACE DURING THE OPERATION OF A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND LOCAL 2251, WHICH WAS BINDING UPON THE EMPLOYEES CONCERNED, THE BOARD FINDS THAT THE RESPONDENTS CONTRAVENED SECTION 54(1) OF THE ACT.

9. THE FOLLOWING NAMED RESPONDENTS HAD RETURNED TO WORK PRIOR TO THE BOARD HEARING: STACEY BUDGE, ROLAND RAINS, AL LONGO, WILFRED PICHE, G. BORDIN, E. CHARLAND, J. GUERRIERO, S. KLESH, M. MASSICOTTE, M. PACCIOCCO AND GINO PARRISENTI. IN THE EXERCISE OF ITS DISCRETION, THE POLICY OF THE BOARD, EXCEPT IN PARTICULAR CIRCUMSTANCES, HAD BEEN TO REFRAIN FROM ISSUING A DECLARATION WHEN THE RESPONDENT EMPLOYEES HAVE RETURNED TO WORK PRIOR TO THE BOARD HEARING OF THE APPLICATION (SEE BALL BROTHERS LIMITED CASE, C.L.L.C. VOL. 1, 1944-1959, ¶18,091). THE BOARD IS NOT SATISFIED THAT THE PARTICULAR CIRCUMSTANCES, OUTLINED IN THE ABOVE CITED CASE, HAVE BEEN MET IN RELATION TO THOSE INDIVIDUAL RESPONDENTS WHO HAD RETURNED TO WORK PRIOR TO THE BOARD HEARING. THE BOARD ACCORDINGLY IS NOT PREPARED TO ISSUE A DECLARATION WITH RESPECT TO THEM. FURTHER, HAVING REGARD TO THE CIRCUMSTANCES RELATING TO THE ABSENCE OF SERVICE OF THE APPLICATION UPON E. BELKOSKY, THE BOARD IS NOT PREPARED TO ISSUE A DECLARATION AFFECTING HIM.

10. THE BOARD DECLARES THAT THE STRIKE ENGAGED IN BY J. ARDITO, G. ASH, J. BELANGER, AMELIO BIOCCHI, R. BOISSONEAU, F. BOYER, N. CARLUCCI, E. CAVALINI, C. COCCIMIGLIO, E. COCCIMIGLIO, M. CORMIER, W. COUTU, V. DARBY, B. DEETZ, L. DEMERS, K. KEPLONTY, G.A. DIMMA, O. DISANO, T. DODDS, M. DUPUIS, R. DUPUIS, H. EATON, J. ENTWISTLE, W. FAUBERT, H. GRZELAK, H. HELMUT, V. KALDMA, A. KIDDER, R. KUSKOWICZ, O. LUCIO, R. LUXTON, E. MACLEAN, W. MCMINN, F. MACCARONI, S. MATTALO, A. NACCARATO, W. PATRICK, G. RUSSELL, W. SHARPE, G. SMAIL, G. SPURWAY, J. STUTT, F. TRAVESON, T. TREMBLAY, D. TRUDELL, F. TUCKER, R. VERDECCHIA, R. WONHAM, R. WYATT, R. BALL, L. BOISSINEAU, D. BOLDOC, M. BRANDOW, V. CAICCO, M. CAMPBELL, W. CARLSON, J. CORBIERE, F. DEMERINO, T. GALLAGHER, W. GLAVAS, H. GODSON, E. GRUNT, L. JOMPHE, L. JARVIS, R. KING, P. LEBLANC, R. LEFAVE, D. LEONARD, R. LEPAGE, K. MCLEAN, R. MCLEAN, A. MACDONALD, R. MACDONALD, B. MACKENZIE, D. MARRIOTTE, G. MECREDI, D. PALUZZI, D. PAYETTE, F. PIGHIN, J. PILON, M. RAINS, P. RANKIN, H. REED, O. RUTLIDGE, J. STIENKE, G. TOWELL, C. WILLITON, W. WILSON, E. CARTER, C. CHANDLER, A. CHARTRAND, G. ECKFORD, F. EELS, D. FINLAYSON, H. HOLTOM, C. HURLEY, H. JACKSON, P. KRUPKA, R. LAFLEUR, B. LANCE, H. LESAGE, N. LEVESQUE, R. MCLELLAND, A. MACDONALD, S. NARDI, A. ROBINSON, V. SARTORI, R. SEIQUART, I. SIEKSTENS, C. SOUSA, F. THIBODEAU, E. TRAVESON, W. VAN ROENN, D. WYMAN AND G. ZORZI COMMENCING ON MAY 22ND, 1968 IS UNLAWFUL.

INDEXED ENDORSEMENT - LOCK-OUT UNLAWFUL

14554-68-U: BRICKLAYERS' AND MASONS' INTERNATIONAL UNION NO 5
(APPLICANT) v. ELLIS DON LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER
AND R. W. TEAGLE.

APPEARANCES AT HEARING: R. KOSKIE AND K. JACKSON FOR THE APPLICANT,
AND D. J. MCKILLOP AND J. WHALEN FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 24, 1968.

2. THIS IS AN APPLICATION FOR A DECLARATION THAT A LOCK-OUT CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.

3. THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A SUBSISTING COLLECTIVE AGREEMENT COVERING EMPLOYEES OF THE RESPONDENT AND MEMBERS OF THE APPLICANT AT WORK SITES, INTER ALIA, IN THE COUNTY OF MIDDLESEX. THE PROJECT IN QUESTION IS A STUDENT RESIDENCE COMPLEX AT THE UNIVERSITY OF WESTERN ONTARIO. THE RESPONDENT IS THE GENERAL CONTRACTOR ON THIS PROJECT.

4. AT NOON ON WEDNESDAY, MAY 1ST, 1968, A WORK STOPPAGE OCCURRED AT THE SITE INVOLVING ELECTRICAL EMPLOYEES OF ONE OF THE SUB-CONTRACTORS ON THE JOB. THE BRICKLAYER EMPLOYEES OF THE RESPONDENT CONTINUED TO WORK ON WEDNESDAY AND ON THURSDAY, MAY 2ND, BUT WERE NOTIFIED BY THE RESPONDENT AT ABOUT 4:15 P.M. ON THURSDAY AFTERNOON THAT THERE WOULD BE NO WORK SCHEDULED FOR FRIDAY, MAY 3RD. HOWEVER, THE NEXT MORNING A CONSIDERABLE NUMBER OF EMPLOYEES OF THE RESPONDENT, TOGETHER WITH EMPLOYEES OF OTHER SUB-CONTRACTORS ON THE JOB, INCLUDING ELECTRICAL WORKERS, REPORTED FOR WORK. THESE PERSONS DID NOT ENTER THE PROJECT BECAUSE THEY FOUND A BARRIER ACROSS THE ENTRANCE TO THE PROJECT ON WHICH WAS POSTED A NOTICE READING AS FOLLOWS:

MAY 3/68

NOTICE

NO WORK TO DAY
DO TO LACK OF ELECTRICI-
CIANS WE ARE UNABLE
TO PLAN WORK

SUPT.

5. LATER ON FRIDAY THE RESPONDENT ISSUED RELEASES TO THE VARIOUS NEWS MEDIA THAT WORK WAS SCHEDULED FOR MONDAY, MAY 6TH AND, AS A RESULT, EMPLOYEES OF THE RESPONDENT AND OF THE VARIOUS SUB-CONTRACTORS REPORTED FOR WORK ON MONDAY MORNING. HOWEVER, ONCE AGAIN, THE EMPLOYEES DID NOT WORK THAT DAY BECAUSE THEY REFUSED TO CROSS A PICKET LINE WHICH HAD IN THE MEANTIME BEEN ESTABLISHED BY THE SHEET METAL WORKERS' TRADE UNION. THE EVIDENCE IS THAT THIS TRADE UNION WAS ON A LEGAL STRIKE AGAINST THE SAME SUB-CONTRACTOR WHOSE ELECTRICIANS STAGED A WORK STOPPAGE ON MAY 1ST. THE SHEET METAL WORKERS' PICKET LINE WAS STILL BEING MAINTAINED ON WEDNESDAY, MAY 15TH, THE SECOND DAY OF HEARING IN THIS PARTICULAR APPLICATION. AS OF THAT DATE NO WORK WAS BEING PERFORMED ON THE PROJECT.

6. THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT CONTAINS THE FOLLOWING PROVISION:

ARTICLE 12 - NO STRIKE OR LOCK-OUT

AS LONG AS THIS AGREEMENT CONTINUES TO OPERATE, NO EMPLOYEE BOUND BY THIS AGREEMENT SHALL STRIKE AND NO EMPLOYER BOUND BY THIS AGREEMENT SHALL LOCK-OUT SUCH AN EMPLOYEE.

HOWEVER, THIS ARTICLE DOES NOT DENY THE EMPLOYEES THE RIGHT TO REFUSE TO CROSS ANY LEGAL PICKET LINES, AND THE EMPLOYER AGREES THAT NO ACTION WILL BE TAKEN AGAINST THE UNION OR ANY EMPLOYEE FOR REFUSING TO CROSS SUCH LEGAL PICKET LINES.

SIMILARLY, THE EMPLOYER SHALL NOT BE DEEMED TO HAVE CONTRAVENED THIS ARTICLE IF A JOB OR PROJECT IS CLOSED DOWN BY ACTION BEYOND HIS CONTROL. IN ANY EVENT, NOTICE OF SUCH ACTIONS BY EITHER PARTY SHALL BE GIVEN PRIOR TO SUCH ACTION TAKING PLACE.

THE APPLICANT CONTENDS THAT ITS MEMBERS WERE ENTITLED TO REFUSE TO CROSS THE PICKET LINE BECAUSE OF THE PROVISIONS OF ARTICLE 12. WE ARE NOT CALLED UPON TO MAKE ANY DECISION ON THIS POINT IN THIS APPLICATION AND REFRAIN FROM SO DOING. HOWEVER, IT IS CLEAR THAT IF THERE WAS A LOCK-OUT ON MAY 3RD, IT WAS TERMINATED ON MONDAY MORNING AT WHICH TIME WORK WAS SCHEDULED AND WOULD HAVE BEEN PERFORMED BY THE BRICKLAYER EMPLOYEES OF THE RESPONDENT BUT FOR THE PICKET LINE. IN FACT, COUNSEL FOR THE APPLICANT CONCEDES THAT IF A DECLARATION WERE TO ISSUE, IT WOULD RELATE ONLY TO FRIDAY, MAY 3RD, 1968.

7. ON AN APPLICATION FOR A DECLARATION THAT A STRIKE IS UNLAWFUL THE BOARD WILL NOT ISSUE THE DECLARATION WHERE THE STRIKE HAS BEEN SETTLED BEFORE THE APPLICATION COMES ON FOR HEARING, UNLESS SPECIAL CIRCUMSTANCES EXIST. THIS POLICY OF THE BOARD IS DESCRIBED AT LENGTH IN SUCH CASES AS THE McNAMARA-RAYMOND CASE, 61 C.L.L.C. PAR. 16, 192 AND THE NATIONAL REFRACTORIES LTD. CASE, 63 C.L.L.C. PAR. 16,276. IN THE LATTER CASE THE BOARD SAID:

...THE BOARD HAS VIEWED STRIKE OR LOCK-OUT DECLARATIONS PRIMARILY AS INSTRUMENTS TO AID IN THE SETTLEMENT OF LABOUR DISPUTES. ACCORDINGLY IT HAS EXERCISED ITS DISCRETION IN MAKING DECLARATIONS FOR THE PURPOSE OF ENCOURAGING THE PARTIES TO RESOLVE THE ISSUES IN DISPUTE.
(EMPHASIS ADDED)

IN THE JOYCE AND SMITH PLATING COMPANY LIMITED CASE, (1956) CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, PAR. 16,049, THE APPLICANT SOUGHT A DECLARATION OF UNLAWFUL LOCK-OUT. THE DECISION READS IN PART:

WE COME THEN TO THE FINAL QUESTION IN THIS CASE. SHOULD A DECLARATION ISSUE? IN ONE SENSE, IT IS PROBABLY THE CASE THAT JOYCE WAS PROVOKED INTO MAKING THE STATEMENT THAT THE EMPLOYEES WHO ATTENDED THE UNION MEETING WERE 'ALL FIRED' BECAUSE HE WAS VEXED BY THE FAILURE OF THE NIGHT SHIFT EMPLOYEES TO REPORT FOR WORK. IF HE HAD INFORMED THE EMPLOYEES SHORTLY THEREAFTER THAT THEY COULD RETURN TO WORK AND IF HE HAD REINSTATED THEM, THE BOARD, FOLLOWING ITS USUAL PRACTICE IN SUCH CASES, WOULD NOT HAVE ISSUED A DECLARATION UNDER SECTION 60.

SEE ALSO BALL BROTHERS LTD, (1957 OP. CIT. PAR. 16,091.

8. THESE TWO QUOTATIONS FROM EARLIER CASES ARE CITED FOR THE PURPOSE OF SHOWING THAT IN LOCK-OUT CASES, AS IN STRIKE CASES, THE BOARD HAS TAKEN THE POSITION THAT THE ISSUANCE OF A DECLARATION IS A MATTER OF DISCRETION. UNLIKE THE STRIKE CASES, HOWEVER, THERE IS VERY LITTLE IN THE REPORTED DECISIONS OF THE BOARD INDICATING THE CIRCUMSTANCES IN WHICH A LOCK-OUT DECLARATION SHOULD OR SHOULD NOT ISSUE. THIS IS NO DOUBT ACCOUNTED FOR BY THE FACT THAT VERY FEW LOCK-OUT APPLICATIONS HAVE BEEN FILED WITH OR HEARD BY THE BOARD. BE THAT AS IT MAY, IT SEEMS TO US BOTH ON REASON AND IN PRINCIPLE THAT THE BOARD SHOULD APPLY TO LOCK-OUT DECLARATIONS THE POLICIES THAT IT HAS DEVELOPED WITH RESPECT TO STRIKE DECLARATIONS.

9. IN THE PRESENT CASE THE LOCK-OUT WAS OVER AT THE TIME OF THE FIRST HEARING AND, BUT FOR THE INTERVENTION OF A PICKET LINE ESTABLISHED BY A THIRD PARTY TRADE UNION, THE RESPONDENT'S EMPLOYEES WOULD HAVE RETURNED TO WORK ON MONDAY, MAY 6TH. THE DECISION NOT TO WORK WAS THAT OF THE EMPLOYEES. THE SITUATION WOULD THUS APPEAR TO BE ANALOGOUS TO THE CASE OF A WORK STOPPAGE BY EMPLOYEES WHO RETURN TO WORK BEFORE THE HEARING OF A STRIKE DECLARATION, IN WHICH CASE THE BOARD DOES NOT NORMALLY ISSUE A DECLARATION. SEE THE CASES REFERRED TO ABOVE.

10. HOWEVER, COUNSEL FOR THE APPLICANT SUBMITS THAT THE SITUATION IN THE PRESENT CASE IS ANALOGOUS TO THAT WHICH EXISTED IN McNAMARA-RAYMOND, SUPRA. IN THAT CASE STRIKING EMPLOYEES HAD RETURNED TO WORK PRIOR TO THE HEARING. HOWEVER, THE BOARD FOUND ON THE FACTS THAT THERE HAD BEEN NO REAL SETTLEMENT OF THE DISPUTE WHICH HAD LED TO THE STOPPAGE AND ISSUED THE DECLARATION "HAVING REGARD TO THE CIRCUMSTANCES UNDER WHICH THE EMPLOYEES RETURNED TO WORK, TO THE PECULIAR POSITION IN WHICH THE APPLICANT FOUND ITSELF IN SO FAR AS THE NEGOTIATIONS WERE CONCERNED, AND TO THE NATURE OF THE DISPUTE WHICH CAUSED THE WALK-OUT IN THE FIRST PLACE..."

11. IN THE PRESENT CASE IT WOULD APPEAR THAT THE APPLICANT, LIKE THE APPLICANT IN THE McNAMARA-RAYMOND CASE, WAS NOT A PARTY TO THE DISPUTE WHICH EXISTED BETWEEN THE ELECTRICAL WORKERS AND THE ELECTRICAL SUB-CONTRACTOR. HOWEVER, THERE THE SIMILARITY BETWEEN THE TWO CASES ENDS. COUNSEL FOR THE APPLICANT CONCEDES THERE IS NO EVIDENCE RESPECTING THE CIRCUMSTANCES IN WHICH THE ELECTRICAL WORKERS RETURNED TO WORK OR CONCERNING THE NATURE OF THE DISPUTE BETWEEN THEM AND THE ELECTRICAL SUB-CONTRACTOR. NEVERTHELESS, COUNSEL SUBMITS WE SHOULD INFER THAT THE DISPUTE WAS NOT SETTLED AND THAT THERE IS A REASONABLE LIKELIHOOD THAT THERE MAY BE ANOTHER WORK STOPPAGE BY THE ELECTRICAL WORKERS FOLLOWED BY A SHUT DOWN OF OPERATIONS BY THE RESPONDENT.

12. THE FACTS SUCH AS WERE DISCLOSED IN THE EVIDENCE DO NOT SUPPORT SUCH AN INFERENCE. THE FACTS ARE THESE: THE ELECTRICAL WORKERS STAGED A WORK STOPPAGE AT NOON ON WEDNESDAY, MAY 1ST. THEY DID NOT PICKET RESPONDENT'S JOB SITE BUT, ACCORDING TO ONE WITNESS, PICKETED THE HOTEL LONDON. WE DO NOT KNOW THE REASON FOR THIS. ELECTRICAL WORKERS REPORTED FOR WORK ON FRIDAY, MAY 3RD AND AGAIN ON MONDAY, MAY 6TH. IN OUR VIEW THE ONLY INFERENCE TO BE DRAWN IS THAT WHATEVER THE NATURE OF THE DISPUTE, IF INDEED THERE WAS A DISPUTE BETWEEN THE ELECTRICAL WORKERS AND THE ELECTRICAL SUB-CONTRACTOR, IT WAS SETTLED OR OVER AND DONE WITH.

13. IN THESE CIRCUMSTANCES, ASSUMING, BUT WITHOUT DECIDING, THAT THE ACTIONS OF THE RESPONDENT ON MAY 2ND AND 3RD CONSTITUTED AN ILLEGAL LOCK-OUT, WE FIND THAT A DECLARATION UNDER SECTION 68 OF THE LABOUR RELATIONS ACT SHOULD NOT BE ISSUED. ACCORDINGLY, THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENT - PROSECUTION

14268-67-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) v. DAVIDSON RUBBER COMPANY INCORPORATED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT HEARING: L. A. MACLEAN AND C. W. FITZGERALD FOR THE APPLICANT, WARREN K. WINKLER FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 2, 1968.

1. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST DAVIDSON RUBBER COMPANY INCORPORATED, THE RESPONDENT IN THIS MATTER, FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- . (A) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 12 OF THE LABOUR RELATIONS ACT AT PORT HOPE IN THAT IT DID FAIL TO BARGAIN IN GOOD FAITH AND MAKE EVERY REASONABLE EFFORT TO MAKE A COLLECTIVE AGREEMENT ON AND AFTER JANUARY 24TH, 1968;
- (B) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 48 OF THE LABOUR RELATIONS ACT IN THAT IT DID INTERFERE WITH THE REPRESENTATION OF ITS EMPLOYEES AT PORT HOPE BY THE APPLICANT UNION BETWEEN FEBRUARY 19TH, 1968 AND FEBRUARY 29TH, 1968;
- (C) THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 59(1) OF THE LABOUR RELATIONS ACT IN THAT IT DID ALTER THE RATES OF WAGES AND OTHER TERMS OR CONDITIONS OF EMPLOYMENT OF ITS EMPLOYEES AT PORT HOPE WITHOUT THE CONSENT OF THE APPLICANT TRADE UNION BETWEEN FEBRUARY 19TH, 1968 AND FEBRUARY 29TH, 1968.

2. THE APPROPRIATE DOCUMENTS WILL ISSUE.

3. THE APPLICANT ALSO ALLEGED THAT THE RESPONDENT COMMITTED AN OFFENCE AGAINST THE PROVISIONS OF SECTION 51 OF THE LABOUR RELATIONS ACT. IT IS CLEAR FROM THE EVIDENCE THAT THE RESPONDENT DID NOT BARGAIN WITH ANY PERSON OR ANOTHER TRADE UNION OR COUNCIL OF TRADE UNIONS ON BEHALF OF THE EMPLOYEES IN THE BARGAINING UNIT OR ANY OF THEM NOR WAS THERE ANY EVIDENCE TO ESTABLISH THAT THE RESPONDENT ENTERED INTO A COLLECTIVE AGREEMENT WITH ANY PERSON OR ANOTHER TRADE UNION OR A COUNCIL OF TRADE UNIONS ON BEHALF OF OR PURPORTING, DESIGNED OR INTENDED TO BE BINDING UPON THE EMPLOYEES IN THE BARGAINING UNIT OR ANY OF THEM. IN THE ABSENCE OF SUCH EVIDENCE, THE BOARD IS SATISFIED THAT THE APPLICANT HAS FAILED TO ESTABLISH THE NECESSARY INGREDIENTS OF AN OFFENCE UNDER SECTION 51 OF THE LABOUR RELATIONS ACT AND THEREFORE HAS FAILED TO ESTABLISH A PRIMA FACIE CASE FOR THE RELIEF REQUESTED.

4. THE APPLICATION OF THE APPLICANT FOR CONSENT TO PROSECUTE THE RESPONDENT FOR CONTRAVENING THE PROVISIONS OF SECTION 51 OF THE LABOUR RELATIONS ACT IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - APPLICATION FOR CONSENT TO PROSECUTE (HOSPITAL
ARBITRATION ACT)

3-68-PH: CANADIAN UNION OF PUBLIC EMPLOYEES' C.L.C., LOCAL 786
(APPLICANT) v. ST. JOSEPH'S HOSPITAL, HAMILTON (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT HEARING: STANLEY SIMPSON, R. JARVIE AND D. McENTEE FOR THE APPLICANT, J. V. CUFF AND J. C. CHALKLIN FOR THE RESPONDENT.

DECISION OF THE BOARD: MAY 3, 1968.

1. THE APPLICANT HAS APPLIED FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 11 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965, AND HAS ALLEGED THAT THE RESPONDENT HAS ALTERED THE RATES OF WAGES AND OTHER TERMS OR CONDITIONS OF EMPLOYMENT OF ITS EMPLOYEES WHO WERE MEMBERS OF AND WHOSE BARGAINING AGENT WAS AND IS THE APPLICANT WITHOUT THE CONSENT OF THE APPLICANT FOLLOWING NOTICE GIVEN BY THE APPLICANT TO THE RESPONDENT OF THE APPLICANT'S INTENTION TO BARGAIN FOR A RENEWAL OF A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, CONTRARY TO SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965, STATUTES OF ONTARIO 1965 CHAPTER 48 AND AMENDMENTS THERETO.
2. THE RESPONDENT HAS TAKEN THE POSITION THAT, AMONG OTHER REASONS, THE APPLICANT SHOULD BE REFUSED THE RELIEF SOUGHT ON THE GROUNDS THAT THE APPLICANT SHOULD BE REQUIRED TO TAKE ADVANTAGE OF SECTION 59(2) OF THE LABOUR RELATIONS ACT AND HAVE THE MATTER ARBITRATED PURSUANT TO THE PROVISIONS OF THAT SECTION OF THE ACT.
3. FOR THE PURPOSE OF DEALING WITH THE RESPONDENT'S OBJECTION, WE WILL ASSUME THAT THE RESPONDENT HAS ALTERED WAGES AND WORKING CONDITIONS OF ITS HOSPITAL EMPLOYEES REPRESENTED BY THE APPLICANT CONTRARY TO THE PROVISIONS OF SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965.
4. WHILE SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965 HAS SPECIFICALLY MODIFIED SECTION 59(1) OF THE LABOUR RELATIONS ACT, IT IS READILY APPARENT THAT THE ONLY MODIFICATION THAT HAS BEEN MADE OF SECTION 59(1) HAS BEEN TO DELETE ANY REFERENCE TO THE TIME LIMITATIONS SET FORTH IN CLAUSE (A) OF SECTION 59(1). THE PROVISIONS OF SECTION 59(1) HAVE NOT BEEN DELETED BY OPERATION OF SECTION 10 OR ANY OTHER SECTION OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965 WITH RESPECT TO HOSPITAL EMPLOYEES BUT HAVE ONLY BEEN MODIFIED AS STATED ABOVE. WE ARE OF OPINION THAT SECTION 59(2) OF THE LABOUR RELATIONS ACT HAS NOT BEEN MODIFIED BY SECTION 10 OR ANY OTHER SECTION OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965, AND, ACCORDINGLY, SECTION 2(2) OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965 MAKES THE PROVISIONS OF SECTION 59(2) OF THE LABOUR RELATIONS ACT APPLICABLE TO THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED.
5. IN THE INSTANT CASE, THERE IS A "DIFFERENCE BETWEEN THE PARTIES AS TO WHETHER OR NOT SUBSECTION 1 OF SECTION 59 WAS COMPLIED WITH " (AS MODIFIED BY SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT,

1965). THIS DIFFERENCE AROSE FOLLOWING THE GIVING OF NOTICE UNDER SECTION 40 OF THE ACT. SINCE SUCH A DIFFERENCE EXISTS IT "MAY BE REFERRED TO ARBITRATION BY EITHER OF THE PARTIES AS IF THE COLLECTIVE AGREEMENT WAS STILL IN OPERATION". IN THIS CASE, HOWEVER, NEITHER OF THE PARTIES HAVE ELECTED TO REFER THE MATTER TO ARBITRATION. HAD THE MATTER BEEN REFERRED TO ARBITRATION, THE PROVISIONS OF SECTION 34 OF THE ACT APPLY AND THE DECISION OF THE ARBITRATION BOARD WOULD BE FINAL AND BINDING WITH RESPECT TO ALL MATTERS REFERRED TO THE BOARD OF ARBITRATION. THE APPLICANT IN THIS MATTER DOES NOT SEEK A REMEDY WHICH WOULD BE AVAILABLE TO IT UNDER ARBITRATION PROCEEDINGS.

6. IT IS THE ESTABLISHED PRACTICE OF THE BOARD TO REFUSE TO GRANT RELIEF TO A PARTY WHERE THE REMEDY SOUGHT IS AVAILABLE TO THAT PARTY IN AN ARBITRATION PROCEEDING. SINCE THE APPLICANT IN THIS CASE IS NOT SEEKING ANY RELIEF WHICH WOULD BE AVAILABLE TO IT IN AN ARBITRATION PROCEEDING BUT IS SEEKING A REMEDY WHICH ONLY THIS BOARD CAN GRANT, AND SINCE SECTION 11 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965 SPECIFICALLY CONFERS UPON THE APPLICANT THE RIGHT TO APPLY FOR CONSENT TO PROSECUTE, WE ARE OF OPINION THAT THERE IS NOTHING IN EITHER THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965 OR IN THE LABOUR RELATIONS ACT WHICH, OF ITSELF, WOULD PERMIT THE BOARD TO REFUSE TO GRANT THE RELIEF SOUGHT BY THE APPLICANT.

7. THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST ST. JOSEPH'S HOSPITAL, HAMILTON, THE RESPONDENT IN THIS MATTER, FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

THAT THE SAID RESPONDENT DID CONTRAVENE SECTION 10 OF THE HOSPITAL LABOUR DISPUTES ARBITRATION ACT, 1965 IN THAT IT DID ALTER THE RATES OF WAGES AND OTHER TERMS OR CONDITIONS OF EMPLOYMENT OF ITS EMPLOYEES AT HAMILTON WITHOUT THE CONSENT OF THE APPLICANT TRADE UNION COMMENCING ON OR ABOUT JANUARY 26TH, 1968.

8. THE APPROPRIATE DOCUMENTS WILL ISSUE.

INDEXED ENDORSEMENT - SECTION 63

14317-67-M: MRS. LILA I. DAVIS MRS. DORIS ENGLISH (COMPLAINANTS) V. NORTHERN ELECTRIC EMPLOYEES ASSOCIATION. UNIT #5. MR. TOM ELLISON, MR. BILL POWELL. DISTRICT REPRESENTATIVES (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MAY 3, 1968.

1. THE COMPLAINANTS FILED A COMPLAINT THAT THE RESPONDENTS FAILED UPON THEIR REQUEST TO FURNISH THEM WITH A COPY OF AN AUDITED FINANCIAL STATEMENT OF THE AFFAIRS OF THE NORTHERN ELECTRIC EMPLOYEES ASSOCIATION, UNIT #5 AT LONDON.
2. THE RESPONDENTS FILED WITH THE BOARD COPIES OF A FINANCIAL STATEMENT OF THE NORTHERN ELECTRIC EMPLOYEES ASSOCIATION FOR THE FISCAL YEAR 1967, CERTIFIED BY ITS SECRETARY-TREASURER. TWO COPIES OF THE FINANCIAL STATEMENT WERE FORWARDED TO THE COMPLAINANTS.
3. THE COMPLAINANTS SUBSEQUENTLY REQUESTED THAT THEY BE PROVIDED WITH A COMPLETE OR SEPARATE FINANCIAL STATEMENT FOR UNIT #5 AT LONDON. THE ASSOCIATION ADVISED THE BOARD THAT BECAUSE OF THE INTEGRATED FINANCIAL OPERATIONS OF THE ASSOCIATION, IT IS NOT POSSIBLE TO PROVIDE A SEPARATE FINANCIAL STATEMENT FOR EACH OF THE UNITS WHICH MAKE UP THE ASSOCIATION.
4. HAVING CONSIDERED THE FINANCIAL STATEMENT FILED BY THE RESPONDENTS, AND THE WRITTEN REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE RESPONDENTS HAVE SATISFIED THE REQUIREMENTS OF SECTION 63 OF THE LABOUR RELATIONS ACT.

INDEXED ENDORSEMENTS - SECTION 65

14570-68-U: JAMES SPEIRS (COMPLAINANT) V. F. W. MURRAY (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: MAY 16, 1968.

1. THE COMPLAINANT HAS COMPLAINED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT ON BEHALF OF HIMSELF AND ANOTHER AGGRIEVED PERSON AND REQUESTS THAT THE BOARD DECLARE THAT MR. F. W. MURRAY DID VIOLATE SECTION 59A(1)(D) OF THE ACT. SECTION 59(1)(D) READS AS FOLLOWS:

59A.-(1) NO EMPLOYER, EMPLOYERS' ORGANIZATION OR PERSON ACTING ON BEHALF OF AN EMPLOYER OR EMPLOYERS' ORGANIZATION SHALL,

(D) INTIMIDATE OR COERCE OR IMPOSE A PECUNIARY OR OTHER PENALTY ON A PERSON,

BECAUSE OF A BELIEF THAT HE MAY TESTIFY IN A PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE OR IS ABOUT TO MAKE A DISCLOSURE THAT MAY BE REQUIRED OF HIM IN A PROCEEDING UNDER THIS ACT OR BECAUSE HE HAS MADE AN APPLICATION OR FILED A COMPLAINT UNDER THIS ACT OR BECAUSE HE HAS PARTICIPATED OR IS ABOUT TO PARTICIPATE IN A PROCEEDING UNDER THIS ACT.

2. MR. F. W. MURRAY WAS A MEMBER REPRESENTATIVE OF EMPLOYERS OF THE DIVISION OF THE LABOUR RELATIONS BOARD WHICH SAT ON AN EARLIER COMPLAINT MADE BY THE COMPLAINANT HEREIN (SEE BOARD FILE 14457-68-U). THE DIVISION OF THE BOARD IN THE EARLIER CASE WAS COMPRISED OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND A. MAIN. THE COMPLAINANT HAS ALSO FILED A COMPLAINT AGAINST A. MAIN, THE BOARD MEMBER REPRESENTATIVE OF EMPLOYEES, SIMILAR TO THE COMPLAINT IN THIS CASE.

3. IT IS THE COMPLAINANT'S CONTENTION THAT MR. MURRAY, IN THE EXERCISE OF HIS FUNCTIONS AS A MEMBER OF THE BOARD UNDER SECTION 75(7) AND (8) OF THE ACT, CONTRAVENED SECTION 59A(1)(D) BY PREVENTING THE COMPLAINANT FROM TESTIFYING SINCE MR. MURRAY JOINED IN THE UNANIMOUS DECISION DISMISSING THE COMPLAINANT'S COMPLAINT PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE WITHOUT A HEARING, IN BOARD FILE 14457-68-U.

4. THE SUBSTANCE OF THE COMPLAINT IN THIS CASE IS THAT WHEN A BOARD MEMBER JOINS IN A DECISION OF THE BOARD WHICH IS ADVERSE TO THE COMPLAINANT'S POSITION, SUCH BOARD MEMBER HAS CONTRAVENED A PROVISION OF THE ACT.

5. WE DO NOT WISH TO LEND WEIGHT TO THE COMPLAINT BY ATTEMPTING TO DEAL WITH IT ON ITS MERITS. IT IS SUFFICIENT TO SAY THAT ONE DIVISION OF THE BOARD HAS NO APPELLATE JURISDICTION OVER ANOTHER DIVISION OF THE BOARD. ACCORDINGLY, THE BOARD HAS NO JURISDICTION TO SIT IN JUDGMENT ON THE CONDUCT OF A BOARD MEMBER IN THE EXERCISE OF HIS FUNCTIONS UNDER THE ACT. IF A PERSON HAS ANY COMPLAINT, REAL OR IMAGINED, AGAINST THE BOARD OR ANY MEMBER THEREOF, THE REMEDY MUST LIE ELSEWHERE.

6. IN ARRIVING AT THIS DECISION WE HAVE CAREFULLY REVIEWED ALL THE ALLEGATIONS CONTAINED IN THE COMPLAINT INCLUDING THE FOLLOWING STATEMENT WHICH THE COMPLAINANT HAS SET FORTH IN ITEM 4 OF HIS COMPLAINT:

WE HAVE HAD PERSONAL INTERVIEWS WITH MR. EBERLEE, DEPUTY MINISTER OF LABOUR, MR. BRUNSKILL, REGISTRAR, WITH MEMBERS OF PARLIAMENT, UNION LAWYERS, DEPARTMENT OF LABOUR LAWYERS, MR. MCNEILL, MR. DAVIES, AND HAVE RECEIVED THE SAME TREATMENT FROM THEM AS WE DO FROM THE LABOUR RELATIONS BOARD. ALL WE HAVE RECEIVED UP TO DATE ARE OPINIONS, VIEWS, IDEAS, AND REASONS, BUT NO DECISIONS OR ACTION.

7. AGAIN, IN ITEM 5 OF THE COMPLAINT, THE COMPLAINANT STATES AS FOLLOWS:

WE THE COMPLAINANTS DO NOT SEE HOW IT IS POSSIBLE TO GET A JUST DECISION OR DETERMINATION FROM THE EXISTING BOARD MEMBERS WHEN TWO OF THESE MEMBERS

ARE DIRECTLY BEING CHARGED WITH A VIOLATION OF THE LABOUR RELATIONS ACT AND UNDER SECTION 75, SUBSECTION 8 GIVES THESE TWO MEMBERS THE POWER TO VOTE ON OUR CASE AS JUDGE AND JURY AND CONCLUDE WITH AN OPINION WHICH WE DO NOT CONSIDER TO BE A DECISION. ALL WE ARE ASKING FOR IS A YES OR NO DECISION, I.E. DO WE HAVE A COMPLAINT OR NOT?

8. HAVING GIVEN FULL CONSIDERATION TO THE COMPLAINT AS FILED IN THIS CASE AND ALL THE STATEMENTS CONTAINED THEREIN, THE BOARD FINDS THAT THE COMPLAINANT IN HIS COMPLAINT HAS FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, DISMISSES THE COMPLAINT.

9. LESS THERE BE ANY DOUBT WITH RESPECT TO THE DISPOSITION OF THE COMPLAINT, IN VIEW OF THE STATEMENT CONTAINED IN ITEM 5 OF THE COMPLAINT IN THIS MATTER, WE WISH TO STATE THAT IT IS THE UNANIMOUS DECISION OF THE BOARD THAT THE ANSWER TO THE COMPLAINANT'S QUESTION WHETHER THE AGGRIEVED PERSONS HAVE A COMPLAINT IS "NO IN THIS MATTER, AND ON THE FACE OF THE BOARD'S DECISION IN THE EARLIER CASES BROUGHT BY THE COMPLAINANT WAS ALSO "NO".

14571-68-U: JAMES SPEIRS (COMPLAINANT) v. A. MAIN (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: MAY 16, 1968.

1. THE COMPLAINANT HAS COMPLAINED UNDER SECTION 65 OF THE LABOUR RELATIONS ACT ON BEHALF OF HIMSELF AND ANOTHER AGGRIEVED PERSON AND REQUESTS THAT THE BOARD DECLARE THAT MR. A. MAIN DID VIOLATE SECTION 59A(2)(B) OF THE ACT.

2. FOR THE REASONS GIVEN BY THE BOARD IN THE COMPLAINT MADE BY THE COMPLAINANT AGAINST F. W. MURRAY IN ITS DECISION DATED MAY 16, 1968, BOARD FILE 14570-68-U AND PURSUANT TO THE PROVISIONS OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THIS COMPLAINT IS DISMISSED.

INDEXED ENDORSEMENT - SECTION 79A

14456-68-M: UNITED STEELWORKERS OF AMERICA (TRADE UNION) v. ALCAN BUILDING PRODUCTS LIMITED (SIDING DIVISION) (SUCCESSOR TO ALCAN BUILDING PRODUCTS LIMITED (WINDOW DIVISION) (EMPLOYER)).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: LORNE INGLE AND OTTA URBANOVICS FOR THE
TRADE UNION, AND C. A. MORLEY AND H. H. NORSWORTHY FOR THE EMPLOYER.

DECISION OF THE BOARD: MAY 30, 1968.

1. THE MINISTER HAS REFERRED TO THE ONTARIO LABOUR RELATIONS BOARD, PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT, THE QUESTION WHETHER THE UNITED STEELWORKERS OF AMERICA IS ENTITLED TO GIVE NOTICE TO BARGAIN TO ALCAN BUILDING PRODUCTS LIMITED (SIDING DIVISION) (SUCCESSOR TO ALCAN BUILDING PRODUCTS LIMITED (WINDOW DIVISION)) PURSUANT TO SECTION 47A OF THE ACT.
2. THE FACTS ARE AS FOLLOWS:
 - 1) UNTIL MARCH 15TH, 1968, ALCAN BUILDING PRODUCTS LIMITED (WINDOW DIVISION) OPERATED AS A SEPARATE BUSINESS ENTITY. AT ITS PLANT IN SCARBOROUGH IT MANUFACTURED ALUMINUM WINDOWS WHICH WERE SOLD THROUGH ITS OWN SALES FORCE. CERTAIN OF THE EMPLOYEES OF THE SCARBOROUGH PLANT, BEING 23 IN NUMBER AS OF MARCH 15TH, WERE REPRESENTED AND COVERED BY A COLLECTIVE AGREEMENT WITH THE UNITED STEELWORKERS OF AMERICA. THAT COLLECTIVE AGREEMENT WAS BETWEEN ALCAN BUILDING PRODUCTS LIMITED (WINDOW DIVISION), SCARBOROUGH, ONTARIO AND THE UNITED STEELWORKERS OF AMERICA AND APPLIED TO A BARGAINING UNIT DEFINED AS "ALL EMPLOYEES OF ALCAN BUILDING PRODUCTS LIMITED (WINDOW DIVISION) WHILE EMPLOYED AT SCARBOROUGH, ONTARIO" WITH CERTAIN NAMED EXCLUSIONS. THESE EMPLOYEES WERE SUPERVISED BY OTHER EMPLOYEES OF ALCAN BUILDING PRODUCTS LIMITED (WINDOW DIVISION).
 - 2) FOR ECONOMIC REASONS, A DECISION WAS MADE THAT THE WINDOW DIVISION WOULD DISCONTINUE ITS BUSINESS AND CEASE TO EXIST AS OF MARCH 15TH, 1968. THE EMPLOYEES WERE ADVISED OF THIS PLAN IN ADVANCE OF THE CLOSING DATE BY THEIR SUPERVISOR, MR. PAUL REID, AND ALL OF THEM WERE TERMINATED AS OF THE CLOSE OF BUSINESS ON MARCH 15TH, 1968, BY MR. REID.
 - 3) OPERATING IN AN ADJACENT BUILDING ON THE SCARBOROUGH PREMISES WAS ALCAN BUILDING PRODUCTS LIMITED (SIDING DIVISION). FOR A NUMBER OF YEARS, THIS BUSINESS HAD ENGAGED IN THE MANUFACTURE AND SALE OF ALUMINUM SIDING AND OPERATED INDEPENDENTLY OF THE WINDOW DIVISION. THE SIDING DIVISION HAD ITS OWN SUPERVISORY STAFF WHICH SUPERVISED A WORKING FORCE CONSISTING OF 24 HOURLY-RATED EMPLOYEES AS OF MARCH 15TH, 1968. THESE EMPLOYEES WERE NOT REPRESENTED BY A UNION.
 - 4) EFFECTIVE AS OF MONDAY, MARCH 18TH, 1968, ALCAN BUILDING PRODUCTS LIMITED (SIDING DIVISION) ASSUMED THE RESPONSIBILITY OF THE BUILDING FORMERLY OCCUPIED BY THE WINDOW DIVISION AND ALSO OF SOME OF THE EQUIPMENT OF THE WINDOW DIVISION. THE BALANCE OF THE WINDOW DIVISION'S ASSETS, INCLUDING ALL TRUCKS, ASSEMBLING, GLAZING, AND STORING EQUIPMENT, AS WELL AS INVENTORIES OF GLASS, WOOD AND FINISHED PRODUCT, WERE SOLD TO OTHER UNRELATED PURCHASERS. SINCE MARCH 18TH, THE SIDING DIVISION HAS BEEN MAKING COMPONENT PARTS FOR WINDOW FRAMES WHICH ARE SOLD IN AN UNASSEMBLED KIT FORM

TO OTHER WINDOW MANUFACTURERS, A LINE WHICH HAD FORMERLY BEEN PRODUCED IN SMALLER QUANTITIES BY THE WINDOW DIVISION. IT IS ALSO PRODUCING AND SELLING MATERIALS IN RAW LINEAL FORM FOR FURTHER FABRICATION BY THE CUSTOMER HIMSELF.

5) THE UNASSEMBLED KIT FORM OF WINDOW REPRESENTED 2 PER CENT OF WINDOW DIVISION'S PRODUCTION. SALE OF ROLLED ALUMINUM FOR MAKING INTO THESE WINDOWS ALSO REPRESENTED 2 PER CENT OF THE WINDOW DIVISION PRODUCTION. THE SAME FIGURES APPLY TO EACH OF THESE LINES AS THEY ARE NOW PRODUCED IN THE SIDING DIVISION (CARRY-OVER EQUALS 4 PER CENT).

6) ON MARCH 18TH, 1968, SOME THIRTEEN FORMER EMPLOYEES OF THE WINDOW DIVISION WERE INTERVIEWED BY MR. FRANK WILKINSON, WHO WAS THE PLANT SUPERVISOR OF THE SIDING DIVISION AND EFFECTIVE AS OF THAT DATE HAD BECOME RESPONSIBLE FOR ALL SIDING DIVISION FACILITIES INCLUDING THE FORMER WINDOW DIVISION BUILDING. THESE EMPLOYEES COMPLETED APPLICATIONS FOR EMPLOYMENT AND WERE HIRED AS EMPLOYEES OF ALCAN BUILDING PRODUCTS LIMITED (SIDING DIVISION). SINCE MARCH 18TH, AN ADDITIONAL 3 FORMER WINDOW DIVISION EMPLOYEES HAVE BEEN HIRED BY THE SIDING DIVISION, WHICH NOW HAS A TOTAL HOURLY-RATED WORKING FORCE OF 43 PERSONS. OF THAT TOTAL, 16 ARE FORMER WINDOW DIVISION EMPLOYEES. THIS TOTAL FORCE IS NOW WORKING UNDER COMMON SUPERVISION IN THE TWO BUILDINGS ON THE PREMISES, WITH FORMER WINDOW DIVISION PEOPLE WORKING IN EACH OF THE BUILDINGS. THE OPERATIONS CARRIED ON IN THE TWO BUILDINGS HAVE BEEN INTEGRATED IN THAT THE FORMER WINDOW DIVISION BUILDING IS NOW USED TO PRODUCE MATERIAL WHICH IS THEN FURTHER PROCESSED IN THE ORIGINAL SIDING DIVISION BUILDING AND ALSO TO STORE SIDING DIVISION FINISHED PRODUCT. THE PLANS CALL FOR FURTHER INTEGRATION OF THE COMBINED FACILITIES IN THE IMMEDIATE FUTURE.

3. IN VIEW OF THE EVIDENCE AND WHAT WAS ARGUED BY COUNSEL FOR THE PARTIES, THE BOARD FINDS THAT THE QUESTION REFERRED TO IT BY THE MINISTER INVOLVES AN ISSUE AS TO WHETHER A BUSINESS HAD BEEN SOLD BY ONE EMPLOYER TO ANOTHER. THAT BEING THE CASE, THE BOARD, BY VIRTUE OF THE PROVISIONS OF SECTION 79A(2) OF THE LABOUR RELATIONS ACT, HAS THE SAME POWER AND AUTHORITY AS IT HAS UNDER SECTION 47A AS IF AN APPLICATION HAD BEEN MADE THEREUNDER, AND THE BOARD MAY ISSUE SUCH DIRECTIONS AS TO THE CONDUCT OF THE PROCEEDINGS AS IT DEEMS ADVISABLE.

4. IN LIGHT OF THE FOREGOING AND ON THE BASIS OF THE EVIDENCE, THE BOARD FINDS THAT THE TRANSACTIONS DESCRIBED ABOVE CONSTITUTE A SALE OF BUSINESS BETWEEN ALCAN BUILDING PRODUCTS LIMITED (SIDING DIVISION) AND ALCAN BUILDING PRODUCTS LIMITED (WINDOW DIVISION) WITHIN THE MEANING OF SECTION 47A(1) (A) AND (B) OF THE LABOUR RELATIONS ACT WHICH PROVIDES AS FOLLOWS:

"'BUSINESS' INCLUDES A PART OR PARTS THEREOF;

'SELLS' INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION, AND 'SOLD' AND 'SALE' HAVING CORRESPONDING MEANINGS."

5. DURING THE COURSE OF ARGUMENT REFERENCE WAS MADE TO SECTION 47A (4) OF THE ACT. HOWEVER, NO FORMAL APPLICATION UNDER THE SECTION WAS BEFORE THE BOARD. IN ANY EVENT, IN THE OPINION OF THE BOARD THE EVIDENCE DOES NOT MEET THE REQUIREMENTS OF THE SECTION.

6. THE BOARD FURTHER FINDS ON ALL THE EVIDENCE THAT THERE HAS BEEN AN INTERMINGLING OF THE EMPLOYEES OF THE TWO BUSINESSES WITHIN THE MEANING OF SECTION 47A(5) OF THE LABOUR RELATIONS ACT WHICH STATES THAT THE BOARD MAY, IN SUCH CIRCUMSTANCES,

"(A) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;

(B) DECLARE WHICH TRADE UNION OR TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS; AND

(C) AMEND, TO SUCH EXTENT AS THE BOARD DEEMS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT."

7. HAVING REGARD TO THE AGREEMENT OF THE PARTIES AND THE EVIDENCE, THE BOARD DETERMINES THAT THE EMPLOYEES HERE CONCERNED CONSTITUTE ONE UNIT APPROPRIATE FOR COLLECTIVE BARGAINING DESCRIBED AS FOLLOWS:

ALL EMPLOYEES OF THE EMPLOYER IN SCARBOROUGH, SAVE AND EXCEPT SENIOR SHIPPER, RECEIVER, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, INSTALLERS, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

8. UNDER THE PROVISIONS OF SECTION 47A(7), BEFORE DISPOSING OF ANY APPLICATION UNDER SECTION 47A THE BOARD MAY, AMONG OTHER THINGS, HOLD SUCH REPRESENTATION VOTES AS IT DEEMS APPROPRIATE. THE BOARD IS OF THE OPINION THAT, HAVING REGARD TO ALL THE EVIDENCE AND THE PARTICULAR SITUATION OF THE PRESENT CASE, A REPRESENTATION VOTE SHOULD BE HELD AMONG THE EMPLOYEES IN THE BARGAINING UNIT MENTIONED IN PARAGRAPH 7 HEREOF.

9. THE BOARD ACCORDINGLY DIRECTS THAT A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE EMPLOYER IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE EMPLOYER IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH UNITED STEELWORKERS OF AMERICA.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENT - REQUEST FOR CLARIFICATION OF BARGAINING UNIT

13076-67-R: NURSES' ASSOCIATION PEEL MEMORIAL HOSPITAL (APPLICANT) V. PEEL MEMORIAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INT'L. UNION, LOCAL 204 (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS J. E. C. ROBINSON AND O. HODGES.

DECISION OF THE BOARD: MAY 30, 1968.

1. ON NOVEMBER 8TH, 1967, THE BOARD CERTIFIED THE APPLICANT, FOLLOWING A REPRESENTATION VOTE, AS BARGAINING AGENT FOR ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

2. BY LETTER DATED MAY 6TH, 1968, THE APPLICANT MADE THE FOLLOWING REQUEST:

"DURING NEGOTIATIONS WITH THE ABOVE MENTIONED HOSPITAL, THE QUESTION OF INCLUSION OF HEALTH NURSE, A NEW POSITION SINCE CERTIFICATION, WAS RAISED. THE PARTIES WERE UNABLE TO AGREE IN THIS MATTER. THE APPLICANT, THEREFORE, REQUESTS THE BOARD TO DECIDE THIS MATTER PURSUANT TO SECTION 79, SUBSECTION (2), LABOUR RELATIONS ACT."

3. THE SECTION READS AS FOLLOWS:

"IF, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT OR DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT, A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES. R.S.O.1960, c.202, s.79(2)."

4. THE RESPONDENT WAS DULY NOTIFIED OF THE APPLICANT'S REQUEST AND WROTE TO THE BOARD ON MAY 16TH, 1968. AMONG OTHER MATTERS THE RESPONDENT STATED:

"THE HOSPITAL IS SURPRISED BECAUSE NEGOTIATIONS BETWEEN THE ABOVE PARTIES HAVE BEEN CONCLUDED AND A COLLECTIVE AGREEMENT WAS SIGNED ON MAY 1ST. DURING THE NEGOTIATIONS, THE ASSOCIATION REQUESTED THAT THE HEALTH NURSE BE VOLUNTARILY PLACED BY THE HOSPITAL IN THE BARGAINING UNIT. THE HOSPITAL DECLINED TO DO SO AND BOTH THE SETTLEMENT AND THE COLLECTIVE AGREEMENT REFLECT THIS POSITION. THE HOSPITAL NATURALLY ASSUMED THAT THE ASSOCIATION HAD ACCEPTED THE HOSPITAL'S POSITION. OTHERWISE, THIS ISSUE WOULD STILL BE A MATTER OF DISPUTE."

5. A COPY OF THE RESPONDENT'S LETTER WAS FORWARDED TO THE APPLICANT UNDER COVER OF THE REGISTRAR'S LETTER OF MAY 17TH, 1968. NO FURTHER CORRESPONDENCE HAS BEEN RECEIVED FROM THE APPLICANT.

6. THE COLLECTIVE AGREEMENT REFERRED TO IN THE LETTER OF THE RESPONDENT HAS BEEN FILED WITH THE BOARD.

7. IT IS CLEAR FROM THE LETTERS SUBMITTED BY BOTH PARTIES THAT THE QUESTION AS TO WHETHER THE HEALTH NURSE FELL WITHIN THE BARGAINING UNIT WAS A MATTER DISCUSSED AT THE BARGAINING TABLE IN THE NEGOTIATIONS PRECEDING THE SIGNING OF THE COLLECTIVE AGREEMENT. THE RESPONDENT IN ITS LETTER STATES THAT ITS POSITION WAS THAT THE HEALTH NURSE IS EXCLUDED FROM THE UNIT UNDER THE PROVISIONS OF SECTION 1, SUBSECTION 3(B), OF THE LABOUR RELATIONS ACT. THE APPLICANT, AS IT INDICATES, DOES NOT AGREE. THE APPLICANT NEVERTHELESS SIGNED THE COLLECTIVE AGREEMENT. THE AGREEMENT WAS SIGNED PRIOR TO THE DATE OF THE PRESENT APPLICATION TO THE BOARD, SO THAT AT THE DATE OF THIS APPLICATION ALL BARGAINING FOR A COLLECTIVE AGREEMENT HAD CLOSED. IT IS EQUALLY APPARENT, OF COURSE, THAT THE DISPUTE DID NOT ARISE DURING THE PERIOD OF OPERATION OF THE COLLECTIVE AGREEMENT, SINCE THE CATEGORY IN QUESTION AND THE DISAGREEMENT CONCERNING IT AROSE BEFORE THE AGREEMENT COMMENCED TO OPERATE.

8. ON THE BASIS OF THE FACTS SET OUT IN THE SUBMISSIONS OF BOTH PARTIES AND HAVING REGARD TO THE DECISION OF THE BOARD IN THE CITY OF LONDON AND LOCAL #101 CANADIAN UNION OF PUBLIC EMPLOYEES CASE, BOARD FILE NO. 13592-67-M, THE CASES THEREIN CITED, AND THE PROVISIONS OF SECTION 79(2), THE BOARD FINDS THAT THE APPLICANT HAS NOT MADE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED. HAVING REGARD TO THE PROVISIONS OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE BOARD THEREFORE DISMISSED THE APPLICATION.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

14013-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) v. INDUSTRIAL-MINE INSTALLATIONS LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBER
R. W. TEAGLE: MAY 9, 1968.

1. THE RESPONDENT HAS REQUESTED THE BOARD TO REVIEW ITS DECISION CERTIFYING THE APPLICANT AS THE BARGAINING AGENT FOR ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. THE MAIN GROUND FOR THE REQUEST IS THAT, IN DETERMINING THE EMPLOYEES IN THE BARGAINING UNIT FOR PURPOSES OF THE COUNT, THE BOARD TOOK INTO CONSIDERATION ONLY THOSE EMPLOYEES AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. THE RESPONDENT MAINTAINS THAT THE BOARD SHOULD INCLUDE, AS WELL, OTHER EMPLOYEES WHO WERE ABSENT ON THE DATE OF THE MAKING OF THE APPLICATION.
2. IN CONNECTION WITH THIS REQUEST A HEARING WAS HELD AT WHICH EVIDENCE WAS ADDUCED AND REPRESENTATIONS MADE AND SUBSEQUENTLY AN EXAMINER WAS APPOINTED TO MAKE OTHER INQUIRIES. THE EXAMINER'S REPORT HAS ISSUED AND NO OBJECTIONS WERE TAKEN TO THE REPORT AND NO REQUEST SUBMITTED BY THE PARTIES TO MAKE FURTHER REPRESENTATIONS TO THE BOARD.
3. THE EVIDENCE ESTABLISHES THAT ON THE DAY OF THE MAKING OF THE APPLICATION, NAMELY, DECEMBER 30TH, 1967, THERE WERE 24 CARPENTERS AT WORK OF WHOM 21 WERE MEMBERS OF THE APPLICANT. ELEVEN OF THESE WERE HIRED DURING THE LATTER PART OF NOVEMBER, 1967 AND THE REMAINDER COMMENCING ABOUT THE MIDDLE OF DECEMBER, 1967 THROUGH TO THE 18TH OR 19TH OF THAT MONTH. ALL BUT 3 OF THE 24 HAD EITHER QUIT OR BEEN LAID OFF BY THE END OF JANUARY, 1968.
4. THE LIST OF EMPLOYEES FILED BY THE RESPONDENT INDICATED THAT THERE WERE 57 CARPENTERS WHO WERE NOT AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION BECAUSE OF A SHUT-DOWN. IT IS THE NORMAL PRACTICE OF THE COMPANY TO CLOSE OPERATIONS A FEW DAYS BEFORE CHRISTMAS UNTIL THE 3RD OF JANUARY AND IT HAS DONE THIS FOR ALL THE YEARS THAT IT HAS BEEN IN BUSINESS. THE REASON FOR THIS PRACTICE IS THAT THE BULK OF ITS EMPLOYEES COME FROM QUEBEC, SOME DISTANCE AWAY FROM WHERE THEY WORK, AND FOR PERSONAL REASONS THESE EMPLOYEES WILL NOT WORK DURING THE CHRISTMAS SEASON; HENCE THE PRACTICE OF SHUTTING DOWN OPERATIONS DURING THIS PERIOD. THE COMPANY REGARDS THESE EMPLOYEES AS REGULAR EMPLOYEES IN THE SENSE THAT WHEN THEY OBTAIN A CONTRACT THEY HAVE LISTS OF THESE EMPLOYEES WHO ARE THEN CONTACTED AND ASKED TO REPORT FOR WORK.
5. THE 24 EMPLOYEES WERE HIRED LOCALLY, THAT IS, IN THE SUDBURY AREA, AND WERE LOCAL RESIDENTS OF THE AREA. THEY WERE HIRED IN ORDER TO EXPEDITE THE WORK ON A PARTICULAR BUILDING, THE TARGET DATE FOR THE COMPLETION OF THE CONTRACT BEING JANUARY 1ST, 1968. THE COMPANY ANTICIPATED ITS USUAL CHRISTMAN SHUT-DOWN AND, ACCORDINGLY, HIRED THESE 24 PERSONS IN ORDER TO INSURE COMPLETION OF THE WORK IN QUESTION.

6. FORTY-EIGHT OF THE 57 PERSONS REGARDED AS REGULAR EMPLOYEES WORKED DURING DECEMBER UP TO THE TIME OF THE SHUT-DOWN. OF THESE 48, 44 RETURNED TO WORK IN THE BEGINNING OF JANUARY AND WORKED DURING THE FIRST TWO WEEKS OF JANUARY. IN OTHER WORDS, THE EVIDENCE CLEARLY ESTABLISHES THAT, IF IT HAD NOT BEEN FOR THE USUAL CHRISTMAS SHUT-DOWN, THERE WOULD HAVE BEEN A MUCH LARGER NUMBER OF CARPENTERS ON THE JOB ON DECEMBER 30TH, 1967 THAN WAS IN FACT THE CASE.

7. IN COMING TO ITS ORIGINAL DECISION, THE BOARD, FOLLOWING ITS USUAL PRACTICE, LOOKED ONLY TO THOSE EMPLOYEES ACTUALLY AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION. THE RESPONDENT SUBMITS THAT IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE THE BOARD SHOULD DEPART FROM ITS NORMAL POLICY. THAT POLICY WAS ESTABLISHED BECAUSE OF THE PECULIAR NATURE OF THE CONSTRUCTION INDUSTRY WHERE SHORT-TERM EMPLOYMENT IS A REGULAR FEATURE. IN MOST CASES THE BOARD IS CONFRONTED WITH A SITUATION INVOLVING EITHER A "BUILD-UP" OR A "LAY-OFF". IN THE CASE OF A "BUILD-UP" IT IS OFTEN ARGUED BY EMPLOYERS THAT THE APPLICATION IS PREMATURE. HOWEVER, UNDER SECTION 92(2) OF THE LABOUR RELATIONS ACT, THE BOARD IS NOT REQUIRED TO HAVE REGARD TO ANY INCREASE IN THE NUMBER OF EMPLOYEES AFTER THE APPLICATION IS MADE AND, ALTHOUGH THE BOARD HAS A DISCRETION IN THE MATTER, IT HAS BY AND LARGE NOT HAD REGARD TO A PLEA OF "BUILD-UP". THE SAME IS TRUE IN THE CASE OF A "LAY-OFF". IN THESE SITUATIONS, HOWEVER, THERE HAS BEEN NO SUGGESTION THAT THE ANTICIPATED BUILD-UP WILL INVOLVE PERSONS WHO ARE REGARDED AS BELONGING TO AN ESTABLISHED WORK FORCE AS IN THE PRESENT CASE. EMPLOYEES IN SUCH SITUATIONS WILL BE HIRED FROM WHATEVER SOURCE THEY MAY BE AVAILABLE, INCLUDING THE UNION HIRING HALL.

8. THERE IS, HOWEVER, ONE CLASS OF CASE WHICH TO SOME EXTENT IS ANALOGOUS TO THE PRESENT SITUATION. IT DOES HAPPEN ON OCCASION THAT THE EMPLOYEES FOR WHOM THE UNION IS SEEKING CERTIFICATION DO NOT WORK ON THE DATE OF THE MAKING OF AN APPLICATION BECAUSE OF WEATHER CONDITIONS OR SOME OTHER SIMILAR REASON. IN THESE CIRCUMSTANCES IT IS HIGHLY LIKELY THAT THE EMPLOYEES AFFECTED BY THE APPLICATION WILL RETURN TO WORK. NEVERTHELESS, IN SUCH SITUATIONS THE BOARD HAS DISMISSED THE APPLICATION ON THE GROUND THAT ON THE DATE OF ITS MAKING THERE WERE NO EMPLOYEES IN THE BARGAINING UNIT.

9. THIS LAST CLASS OF CASE HAS GIVEN US SOME CONCERN IN THE PRESENT SITUATION. AFTER MUCH ANXIOUS CONSIDERATION, HOWEVER, WE HAVE COME TO THE CONCLUSION THAT IN THE PRESENT CASE WE OUGHT TO TAKE INTO ACCOUNT THE PECULIAR CIRCUMSTANCES WHICH HERE OBTAIN, NAMELY, THE EXISTENCE OF A REASONABLY PERMANENT (FOR THE CONSTRUCTION INDUSTRY) WORK FORCE, TOGETHER WITH THE SHUT-DOWN, THE REASONS THEREFOR AND THE FACT THAT IT IS AN ACCURANCE WHICH HAPPENS YEARLY WITH THIS PARTICULAR RESPONDENT. IN OTHER WORDS, THE REPRESENTATION PRINCIPLE MUST IN THIS CASE TAKE PRECEDENCE OVER THE SHORT-TERM EMPLOYMENT FEATURES OF THE CONSTRUCTION INDUSTRY. VIEWED IN ANOTHER WAY, IF THIS IS TO BE REGARDED AS A CASE INVOLVING BUILD-UP, THEN, IN OUR OPINION, THE PECULIAR CIRCUMSTANCES OF THIS CASE MAKE IT ONE IN WHICH REGARD SHOULD BE HAD TO AN INCREASE IN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AFTER THE APPLICATION WAS MADE. IT MAY WELL BE THAT

THE CONSTRUCTION INDUSTRY DIVISION WILL HAVE TO REVIEW ITS POLICY OF DISMISSING APPLICATIONS IN CIRCUMSTANCES WHERE, BECAUSE OF THE WEATHER OR SOME OTHER UNUSUAL OCCURRENCE, THERE ARE NO EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION.

10. IN REACHING THE ABOVE CONCLUSIONS, WE HAVE NOT OVERLOOKED THE ARGUMENT THAT OUR DECISION MIGHT INTRODUCE A CERTAIN ELEMENT OF DOUBT IN AN OTHERWISE STRAIGHT-FORWARD POLICY AND THAT THIS IN TURN MAY ON OCCASION LEAD TO DELAY IN THE DISPOSITION OF SOME APPLICATIONS FOR CERTIFICATION IN THE CONSTRUCTION INDUSTRY. IN OUR VIEW, HOWEVER, SUCH CONSIDERATIONS MUST GIVE WAY IN A PROPER CASE SUCH AS THE PRESENT WHERE, BECAUSE OF THE PECULIAR AND UNIQUE CIRCUMSTANCES, AN INFLEXIBLE APPLICATION OF A POLICY WOULD PRODUCE AN OBVIOUSLY INEQUITABLE RESULT.

11. THERE REMAINS, THEN, THE QUESTION AS TO THE ULTIMATE DISPOSITION OF THIS APPLICATION. COUNSEL FOR THE RESPONDENT TOOK THE POSITION THAT AT THE VERY LEAST THE BOARD SHOULD ORDER A REPRESENTATION VOTE TO BE TAKEN AND, AFTER CAREFUL CONSIDERATION, WE ARE OF THE OPINION THAT THIS COURSE OF ACTION WOULD BE IN THE BEST INTERESTS OF ALL PARTIES. CERTAINLY ON THE DATE OF THE MAKING OF THE APPLICATION THE APPLICANT'S MEMBERSHIP POSITION AT THE VERY LEAST ENTITLED IT TO A VOTE ON THE BASIS OF THE EMPLOYEES WORKING ON THAT DATE. SUCH A VOTE WOULD ENABLE THE EMPLOYEES WHO WERE NOT AT WORK ON THAT DATE, BUT WHO SUBSEQUENTLY RETURNED, TO EXPRESS THEIR VIEWS AS TO WHETHER THEY WISHED TO BE REPRESENTED BY THE APPLICANT FOR COLLECTIVE BARGAINING PURPOSES. ACCORDINGLY, THE BOARD REVOKES PARAGRAPH 10 OF ITS DECISION OF JANUARY 11TH, 1968 WHICH READS:

"10. A CERTIFICATE WILL ISSUE TO THE APPLICANT."

12. PURSUANT TO THE DISCRETION VESTED IN IT UNDER SECTION 7(2) OF THE LABOUR RELATIONS ACT, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 6 OF ITS DECISION DATED JANUARY 11TH, 1968. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

15. THE PARTIES ARE DIRECTED TO RETURN TO THE BOARD FORTHWITH THE FORMAL CERTIFICATE ISSUED BY THE BOARD, TOGETHER WITH ANY COPIES THEREOF IN THEIR POSSESSION.

DECISION OF BOARD MEMBER E. BOYER: MAY 9, 1968.

AS THE BOARD STATED IN ITS DECISION OF JANUARY 11TH, 1968:

IN APPLICATIONS FALLING UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, IT IS THE PRACTICE OF THE BOARD TO FIX THE LIST OF EMPLOYEES BY REFERENCE TO THOSE ACTUALLY AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION.

THIS PRACTICE HAS BEEN ADHERED TO BY THE BOARD OVER THE YEARS, (SEE BERTRAND & FRERE CONSTRUCTION Co. LIMITED, O.L.R.B. MONTHLY REPORT, JULY 1965, P. 292) AND HAS SERVED EMPLOYERS AND TRADE UNIONS EQUALLY WELL. NEVERTHELESS, THIS PRACTICE HAS BEEN RIGIDLY ENFORCED EVEN THOUGH IT HAS, ON OCCASIONS, CAUSED HARDSHIP TO TRADE UNIONS. SEE WELCON LIMITED, O.L.R.B. MONTHLY REPORT, MARCH 1965, P. 627, WHERE AN UNINFORMED UNION OFFICIAL MAILED AN APPLICATION FOR CERTIFICATION BY REGISTERED MAIL ON A SATURDAY WHEN ONLY ONE EMPLOYEE WAS AT WORK. FOUR EMPLOYEES HAD BEEN AT WORK ON THE PRECEDING DAY. NEVERTHELESS, THE BOARD UNANIMOUSLY DISMISSED THE APPLICATION.

2. IN KEYSTONE CONTRACTORS LIMITED, O.L.R.B. MONTHLY REPORT, FEBRUARY 1966, P. 821, THE FILING DATE FOR A CERTIFICATION APPLICATION WAS THE DAY AFTER A SEVERE SNOW STORM. THE EMPLOYER'S FULL WORK FORCE WAS AT WORK BOTH THE DAY OF THE STORM AND THE DAY AFTER THE SNOW-FALL HAD BEEN CLEARED FROM THE STREETS. THE TRADE UNION ARGUED THAT THE INABILITY OF THE EMPLOYEES TO REPORT FOR WORK ON THE DATE OF THE MAKING OF THE APPLICATION WAS CLEARLY DUE TO "AN ACT OF GOD" AND BEYOND THEIR CONTROL. THE APPLICANT UNION REQUESTED THE BOARD TO DEPART FROM ITS USUAL POLICY AND TAKE INTO ACCOUNT THE FACT THAT THE EMPLOYEES CONCERNED WERE AT WORK ON BOTH DAYS IMMEDIATELY PRIOR AND SUBSEQUENT TO THE DATE OF THE MAKING OF THE APPLICATION. THE BOARD UNANIMOUSLY DISMISSED THE APPLICATION AND STATED:

THE BOARD IS OF THE OPINION THAT, WHILE THERE MAY BE MERIT IN THE APPLICANT'S SUBMISSION IN THE PARTICULAR CIRCUMSTANCES OF THE INSTANT CASE, TO ACCEDE TO THE APPLICANT'S REQUEST MIGHT WELL LEAD TO UNCERTAINTY AND CONTROVERSY REGARDING THE BOARD'S POLICY IN SUBSEQUENT APPLICATIONS. ACCORDINGLY, THE BOARD IS NOT PREPARED TO MAKE AN EXCEPTION FROM ITS ESTABLISHED POLICY IN THE INSTANT CASE. WE WOULD ADD THAT, IN OUR VIEW, THE BOARD'S POLICY IS BASICALLY EQUITABLE TO ALL PARTIES AND AS WELL LENDS ITSELF OF THE EXPEDITIOUS DISPOSITION OF CERTIFICATION APPLICATIONS WHICH IS A PRIMARY CONSIDERATION IN THE CONSTRUCTION INDUSTRY. (EMPHASIS ADDED)

3. THE BOARD'S PRACTICE OF FIXING THE NUMBER OF EMPLOYEES FOR THE PURPOSES OF THE COUNT BY REFERENCE TO THE EMPLOYEES ACTUALLY AT WORK ON THE DATE OF THE MAKING OF THE APPLICATION FINDS SUPPORT IN THE REPORT OF THE ROYAL COMMISSION ON LABOUR-MANAGEMENT RELATIONS IN THE CONSTRUCTION INDUSTRY (GOLDERBERG REPORT) ISSUED IN 1962. THE COMMISSIONER,

AFTER HOLDING EXTENSIVE HEARINGS, SET FORTH HIS VIEWS ON THE UNDERLYING PROBLEMS OF THE CONSTRUCTION INDUSTRY IN ONTARIO. AT PAGES 27-28 THE COMMISSIONER STATED:

THE BARGAINING UNIT ENVISAGED BY THE ACT IS A GROUP OF REGULARLY EMPLOYED PERSONS ENGAGED BY A SINGLE EMPLOYER AND WORKING AT A PARTICULAR LOCATION THROUGHOUT THE YEAR. CONSTRUCTION EMPLOYMENT DOES NOT FIT THIS PICTURE. IT HAS NO STABILITY. THE WORKER MOVES FROM JOB TO JOB AND FROM EMPLOYER TO EMPLOYER. THE DURATION OF HIS EMPLOYMENT MAY RANGE FROM A FEW DAYS TO A NUMBER OF MONTHS, DEPENDING UPON THE SIZE OF THE PROJECT. THE CLASS OF CRAFTSMEN AND THE NUMBER EMPLOYED IN ANY PARTICULAR CRAFT WILL RISE AND FALL AS THE JOB PROGRESSES. THERE IS RARELY ANY PERIOD OF TIME DURING WHICH THE NUMBER OF EMPLOYEES IN SOME OF THE CRAFTS ON A CONSTRUCTION PROJECT CAN BE SAID TO CONSTITUTE A "NORMAL WORK FORCE", IN THE SENSE IN WHICH THAT TERM IS USED IN MANUFACTURING.

AT PAGE 29 THE COMMISSIONER ADDED:

I RECOMMEND THAT IN CONSTRUCTION CASES THE BOARD SHOULD NOT WAIT UNTIL A REPRESENTATIVE GROUP OF EMPLOYEES IS AT WORK BUT SHOULD ISSUE AN AREA CERTIFICATE UPON THE UNION ESTABLISHING THAT IT HAS THE REQUISITE NUMBER OF MEMBERS AMONG THE EMPLOYEES IN THE UNIT AT THE TIME WHEN THE APPLICATION IS MADE.... (EMPHASIS ADDED)

4. THE DECISION OF THE MAJORITY IN THE INSTANT CASE IGNORES ONE OF THE RECOMMENDATIONS OF THE COMMISSIONER. IN MY OPINION THE DEPARTURE BY THE MAJORITY FROM A WELL-ESTABLISHED PRACTICE OF THE BOARD IS ENTIRELY UNWARRANTED. IT IS OFTEN SAID THAT HARD CASES MAKE BAD LAW. THE MAJORITY DECISION IS A GOOD EXAMPLE OF THIS STATEMENT. I FEEL THAT THE EFFECT OF THE MAJORITY'S DECISION IS TO REMOVE A WELL-ESTABLISHED BOARD POLICY FROM THE DAYLIGHT OF CERTAINTY INTO THE PENUMBRA OF DOUBT. FROM THIS DAY FORTH, THE CERTAINTY OF A PRACTICE OF THE BOARD IS NO MORE. IT IS NOW OPEN FOR ANY PARTY TO FUTURE PROCEEDINGS BEFORE THIS BOARD TO DELAY CONSTRUCTION INDUSTRY CERTIFICATION APPLICATIONS ON THE PRETEXT OF "SPECIAL CIRCUMSTANCES" REGARDING THE EMPLOYER'S WORK FORCE.

5. THE MAJORITY DECISION REFERS TO AN INFLEXIBLE APPLICATION OF A POLICY PRODUCING AN OBVIOUSLY INEQUITABLE RESULT. LET US EXAMINE THE EQUITIES OF THE PRESENT SITUATION. THE APPLICATION FOR CERTIFICATION WAS MADE ON DECEMBER 30, 1967 AND CERTIFICATION WAS GRANTED ON JANUARY 11, 1968. THE RESPONDENT IN ITS REPLY HAD SOUGHT A HEARING ON THE GROUNDS THAT:

THE RESPONDENT DENIES THAT THE APPLICANT HAS A MAJORITY IN GOOD STANDING OF MEMBERS IN THE BARGAINING UNIT CLAIMED BY THE APPLICANT OR BY THE RESPONDENT TO BE APPROPRIATE FOR COLLECTIVE BARGAINING.

6. THE LANGUAGE USED BY THE RESPONDENT WAS SO GENERAL AND IMPRECISE THAT THE BOARD DECLINED TO HOLD A HEARING AND CERTIFIED THE APPLICANT ON JANUARY 11, 1968. THE RESPONDENT DID NOT IMMEDIATELY CLARIFY ITS POSITION WITH RESPECT TO ITS GROUNDS FOR REQUESTING A HEARING. INSTEAD, THE RESPONDENT WAITED FOR MORE THAN TWO WEEKS BEFORE WRITING TO THE BOARD SEEKING TO CLARIFY ITS REPRESENTATIONS REGARDING THE INAPPROPRIATENESS OF THE BARGAINING UNIT GRANTED BY THE BOARD. WHY DID THE RESPONDENT DELAY IN MAKING ADDITIONAL REPRESENTATIONS? I FIND IT DIFFICULT TO ACCOUNT FOR THE RESPONDENT'S INITIAL IMPRECISION OF LANGUAGE AND ITS SUBSEQUENT DELAY WHEN THROUGHOUT THESE PROCEEDINGS IT HAS BEEN REPRESENTED BY SOLICITORS WELL ACQUAINTED WITH BOARD PRACTICES AND POLICIES.

7. THE APPLICANT, ON THE OTHER HAND, HAS BEEN GUILTY OF NEITHER WRONG-DOING NOR DELAY. FULLY FOUR MONTHS AFTER MAKING APPLICATION FOR CERTIFICATION THE APPLICANT FINDS ITS STATUS TO ACT AS THE BARGAINING AGENT FOR A BARGAINING UNIT OF THE RESPONDENT'S EMPLOYEES IN DOUBT.

8. BEARING IN MIND THE MAXIM THAT DELAY DEFEATS EQUITY, I WOULD HAVE HELD THAT THE EQUITIES OF THE PRESENT CASE STRONGLY FAVOUR THE APPLICANT. ACCORDINGLY, I WOULD DENY THE RESPONDENT'S REQUEST TO RECONSIDER, VARY OR REVOKE THE BOARD'S DECISION OF JANUARY 11, 1968.

G. W. REED FOR THE MAJORITY: MAY 9, 1968.

WE HAVE CONSIDERED THE DISSENTING OPINION OF OUR COLLEAGUE, MR. BOYER, AND WOULD MERELY OBSERVE THAT, IN DEALING WITH EQUITIES, ONE MUST LOOK NOT ONLY AT THE POSITION OF THE TWO PARTIES BUT ALSO AT THAT OF APPROXIMATELY FIFTY EMPLOYEES WHO, PRESUMABLY, THE APPLICANT WAS UNABLE TO ORGANIZE, ALTHOUGH HAVING EVERY OPPORTUNITY TO DO SO.

14086-67-R: COMMUNICATIONS WORKERS OF AMERICA, AFL, CIO & CLC (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. NORTHERN ELECTRIC EMPLOYEES ASSOCIATION (INTERVENER #1) V. UNITED STEELWORKERS OF AMERICA (INTERVENER #2).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MAY 7, 1968.

1. COUNSEL FOR THE UNITED STEELWORKERS OF AMERICA, INTERVENER #2 IN THIS MATTER, WROTE TO THE BOARD ON MAY 6TH, 1968 AND REQUESTED THE BOARD TO CLARIFY THE BOARD'S DECISION OF FEBRUARY 29TH, 1968, WHEREIN THE BOARD APPOINTED AN EXAMINER IN THIS MATTER. THE LETTER OF MAY 6TH, 1968 READS AS FOLLOWS:

IN ACCORDANCE WITH THE BOARD'S DECISION OF FEBRUARY 29, 1968, EXAMINER MORROW HAS CONVENED A HEARING FOR MAY 14TH NEXT IN OTTAWA TO EXAMINE WITNESSES WITH RESPECT TO THE COMPOSITION OF THE BARGAINING UNIT, AND MORE PARTICULARLY, ON THE DUTIES, RESPONSIBILITIES AND COMMUNITY OF INTEREST OF INSTALLERS EMPLOYED BY THE RESPONDENT COMPANY.

INTERVENER #2 HEREBY RESPECTFULLY REQUESTS THE BOARD TO CLARIFY THE EXAMINER'S RESPONSIBILITIES AS BEING LIMITED TO THE DUTIES, RESPONSIBILITIES AND COMMUNITY OF INTEREST OF THE AFORESAID INSTALLERS AS THEY ARE RELATED ONLY TO THE COMPOSITION OF THE BARGAINING UNIT.

THIS INTERVENER RESERVES THE RIGHT TO CALL FURTHER EVIDENCE BEFORE THE BOARD ITSELF ON THE DUTIES AND RESPONSIBILITIES OF INSTALLERS AS SUCH EVIDENCE MAY RELATE TO THE CONSTITUTIONAL JURISDICTION OF THE BOARD.

IT IS RESPECTFULLY REQUESTED THAT THE BOARD MAKE THIS CLARIFICATION PRIOR TO THE COMMENCEMENT OF EXAMINER MORROW'S HEARING ON MAY 14TH NEXT.

IN ORDER TO PERMIT OTHER PARTIES TO COMMENT IMMEDIATELY ON THE ABOVE REQUEST, COPIES OF THIS LETTER ARE BEING SENT THIS DATE TO EACH OF SUCH OTHER PARTIES.

2. AT THE TIME THE BOARD APPOINTED THE EXAMINER IN THIS CASE, THE BOARD WAS FULLY AWARE THAT THERE WAS AN ISSUE BETWEEN THE PARTIES CONCERNING THE CONSTITUTIONAL JURISDICTION OF THE BOARD. THE BOARD WAS ALSO AWARE THAT ONE OR MORE OF THE PARTIES HAD REQUESTED THE BOARD TO HEAR ALL THE EVIDENCE CONCERNING THE CONSTITUTIONAL ISSUE, RATHER THAN APPOINT AN EXAMINER TO CONDUCT AN INQUIRY TO OBTAIN SUCH EVIDENCE.

3. THE BOARD'S DECISION DATED FEBRUARY 29TH, 1968, WHEREIN THE EXAMINER WAS AUTHORIZED TO "INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY ON THE DUTIES, RESPONSIBILITIES AND COMMUNITY OF INTEREST OF PERSONS CLASSIFIED BY THE RESPONDENT AS INSTALLERS", WAS MADE FOLLOWING THE HEARING ON FEBRUARY 28TH, 1968 AT WHICH HEARING THE PARTIES HAD FULL OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO THE APPOINTMENT OF THE EXAMINER.

4. THE BOARD, IN APPOINTING THE EXAMINER, INTENDED THAT THE EXAMINER OBTAIN ALL THE RELEVANT EVIDENCE INCLUDING THE EVIDENCE WITH RESPECT TO THE CONSTITUTIONAL ISSUE INVOLVED IN THIS CASE AND THE BOARD IS OF OPINION THAT THE AUTHORITY GIVEN TO THE EXAMINER IS BROAD ENOUGH TO PERMIT THE EXAMINER TO OBTAIN SUCH EVIDENCE.

5. THE BOARD IS NOT PREPARED TO DEPART FROM ITS USUAL PROCEDURE, WHEREBY THE EVIDENCE OF THE DUTIES AND RESPONSIBILITIES AND COMMUNITY OF INTEREST OF THE INSTALLERS IS OBTAINED THROUGH THE ASSISTANCE OF THE EXAMINER APPOINTED FOR THAT PURPOSE, IN THE CIRCUMSTANCES OF THIS CASE.

6. THE EXAMINER IS ACCORDINGLY DIRECTED TO PROCEED WITH HIS INQUIRY IN ACCORDANCE WITH THE BOARD'S DECISION OF FEBRUARY 29TH, 1968, IN THIS MATTER.

DECISION OF THE BOARD: MAY 14, 1968.

1. THE APPLICANT, IN A LETTER FROM ITS SOLICITOR DATED MAY 9TH, 1968, HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED MAY 7TH, 1968, IN THIS MATTER. ALL THE MATTERS REFERRED TO AND ALL THE ISSUES RAISED BY THE APPLICANT IN ITS LETTER OF MAY 9TH, 1968 WERE TAKEN INTO CONSIDERATION BY THE BOARD PRIOR TO ITS ARRIVING AT ITS DECISION DATED MAY 7TH, 1968, IN THIS MATTER, AND, ACCORDINGLY, THE BOARD IS OF OPINION THAT IT IS NOT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF MAY 7TH, 1968, IN THIS MATTER.

2. THE REQUEST OF THE APPLICANT IS ACCORDINGLY DENIED.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - SECTION 79(2)

13761-67-M: THE CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000 (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: MAY 28, 1968.

1. THE APPLICANT BY ITS LETTERS DATED MAY 9TH AND MAY 24TH, 1968 HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF MARCH 18TH, 1968 IN THIS MATTER AND DIRECT THE EXAMINER TO ISSUE AN INTERIM REPORT ON THE DUTIES AND RESPONSIBILITIES OF THE PERSONS ALREADY EXAMINED.

2. HAVING REGARD TO THE REPRESENTATIONS OF THE APPLICANT CONTAINED IN THE LETTERS ABOVE REFERRED TO AND THE REPRESENTATIONS OF THE RESPONDENT AS CONTAINED IN ITS LETTER DATED MAY 17TH, 1968, THE BOARD IS OF OPINION THAT NO USEFUL PURPOSE WILL BE SERVED BY THE BOARD DIRECTING

THAT THE EXAMINER FRAGMENT HIS REPORT. THE POSSIBILITY, IF NOT THE LIKELIHOOD, OF MULTIPLE HEARINGS WITH RESPECT TO THE MATTERS CONTAINED IN THE REPORT OF THE EXAMINER, IF INTERIM REPORTS ARE SERVED WOULD NOT CONTRIBUTE TO THE EXPEDITIOUS HANDLING OF THIS APPLICATION.

3. IN THE ABSENCE OF ANY AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE RELEVANT POSITION OF THE DISPUTED PERSONS WITHIN THE RESPONDENT'S MANAGERIAL STRUCTURE AND ALL ASPECTS OF THE APPLICANT'S REQUEST HAVING BEEN ASSESSED, THE BOARD IS OF OPINION THAT AN INTERIM EXAMINER'S REPORT WOULD CREATE MORE PROBLEMS THAN IT WOULD SOLVE AND WOULD CONTRIBUTE DELAY TO, RATHER THAN EXPEDITE, THE BOARD'S FINAL DECISION IN THIS CASE.

4. THE BOARD THEREFORE DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF MARCH 18TH, 1968 IN THIS MATTER.

14343-67-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CLC) AND ITS LOCAL 673 (APPLICANT) V. DOUGLAS AIRCRAFT COMPANY OF CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

DECISION OF THE BOARD: MAY 7, 1968.

1. THE RESPONDENT, BY ITS LETTER DATED MAY 1ST, 1968, HAS REQUESTED THE BOARD TO REVOKE ITS DECISION OF APRIL 18TH, 1968, WHEREIN THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THE PERSONS IN DISPUTE, ON THE GROUNDS THAT THE AWARD OF AN ARBITRATION BOARD AS TO WHETHER THE DISPUTED PERSONS ARE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES MAY MAKE THIS BOARD'S DETERMINATION, AS TO WHETHER THEY ARE EMPLOYEES FOR THE PURPOSE OF THE ACT, AN ACADEMIC EXERCISE.

2. THE QUESTION WHETHER THE DISPUTED PERSONS ARE EMPLOYEES FOR THE PURPOSE OF THE ACT IS A SEPARATE AND DISTINCT ISSUE FROM THE QUESTION WHETHER SUCH PERSONS ARE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES. AN AFFIRMATIVE ANSWER TO THE QUESTION WITH WHICH THIS BOARD IS CONCERNED IS NOT DISPOSITIVE OF THE ISSUE WHETHER THE DISPUTED PERSONS ARE INCLUDED IN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES, ALTHOUGH IT MAY ASSIST THE PARTIES IN RESOLVING THE DISPUTE.

3. IF, AS THE RESPONDENT HAS ALLEGED, THE DISPUTED PERSONS ARE EXCLUDED FROM THE BARGAINING UNIT, NO QUESTION CAN ARISE WITH RESPECT TO THEM WITHIN THE MEANING OF SECTION 79(2) OF THE ACT. HOWEVER, IT DOES NOT APPEAR ON THE FACE OF THE COLLECTIVE AGREEMENT THAT THE PERSONS IN DISPUTE ARE SPECIFICALLY EXCLUDED FROM THE COLLECTIVE AGREEMENT.

4. SINCE THE TWO QUESTIONS ARE SEPARATE AND DISTINCT AND SINCE THE BOARD HAS JURISDICTION TO MAKE THE DETERMINATION REQUESTED BY THE APPLICANT, THE RESPONDENT'S REQUEST IS DENIED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

14230-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. R. S. HARDY CONSTRUCTION LIMITED (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

IN THIS CASE THE BOARD FOUND THE APPROPRIATE BARGAINING UNIT TO BE:
"ALL EMPLOYEES OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

THREE OF THE PERSONS IN DISPUTE SPEND THE GREATER PART OF THEIR TIME AS DRILL OPERATORS ALTHOUGH THEY ARE ALSO REQUIRED TO RUN AND MAINTAIN THE COMPRESSOR UNITS SUPPLYING THE POWER TO THE DRILLS. THE OPERATION OF THE DRILL IS SEPARATE FROM THE OPERATION OF THE COMPRESSOR UNIT. WE, THEREFORE, FIND THAT J. BADOUR, M. CLOUTIER AND O. POMERLEAU ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

THE FOURTH PERSON IN DISPUTE IS L. GAUTHIER WHO IS CLASSIFIED BY THE RESPONDENT AS AN OPERATOR. IT IS CLEAR THAT MR. GAUTHIER WAS HIRED AS SUCH AND IN THE COURSE OF HIS EMPLOYMENT WITH THE RESPONDENT HAS SPENT THE GREATER PART OF HIS TIME OPERATING A BULLDOZER. HOWEVER, ON THE DATE OF THE MAKING OF THE APPLICATION HE WAS EMPLOYED AS A DRILLER. HIS CASE IS, THEREFORE, ANALOGOUS TO THAT OF F. CASALE IN THE CLAIRSON CONSTRUCTION COMPANY LIMITED CASE, BOARD FILE NO. 12748-66-R, DECISION DATED SEPTEMBER 6, 1967 (SEE ADDENDA O.L.R.B. MONTHLY REPORT, APRIL 1968, P. 126). IN THAT CASE MR. CASALE WAS EXCLUDED FROM THE BARGAINING UNIT FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AND THE SAME REASONING MUST, THEREFORE, APPLY TO MR. GAUTHIER.

(MAY 15, 1968).

14437-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 597
(APPLICANT) V. THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENT).

3. AT THE HEARING IN THIS MATTER, THE RESPONDENT FILED WITH THE BOARD A CERTIFICATE DATED JULY 30, 1959 IN WHICH LOCAL 636 OF THE INTERNATIONAL HOD CARRIERS', BUILDING AND COMMON LABOURERS' UNION OF AMERICA (HEREINAFTER REFERRED TO AS LOCAL 636) WAS CERTIFIED FOR "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF FRID CONSTRUCTION COMPANY LIMITED AT ITS B. GREENING WIRE CO., LTD. MANUFACTURING PLANT PROJECT IN THE TOWNSHIP OF TAY". THE RESPONDENT ALSO FILED A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE SAID LOCAL 636 WHICH PROVIDES "THE AREA OVER WHICH THIS COLLECTIVE AGREEMENT SHALL BE EFFECTIVE IS AS

FOLLOWS: THE B. GREENING WIRE PLANT AT MIDLAND, ONTARIO." THIS AGREEMENT IS FOR A PERIOD FROM JULY 1, 1959 TO JUNE 30, 1960 AND PROVIDES AS FOLLOWS: "PROVIDING NO SUCH NOTICE IS GIVEN BY EITHER PARTY, THIS AGREEMENT SHALL CONTINUE IN FORCE FROM YEAR TO YEAR." THE PROJECT REFERRED TO HAS BEEN COMPLETED. IT IS CLEAR THEN THAT THE SAID LOCAL 636 HAS NO BARGAINING RIGHTS WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT UNDER THE TERMS OF THE CERTIFICATE OR THE COLLECTIVE AGREEMENT. IN ANY EVENT, THE BOARD IS SATISFIED THAT LOCAL 636 WAS DISBANDED AT LEAST SIX YEARS AGO AND IS NO LONGER IN EXISTENCE.

(MAY 1, 1968).

14552-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. NADECO LIMITED (RESPONDENT).

5. THE APPLICANT HAS BEEN CERTIFIED FOR A BARGAINING UNIT OF CONSTRUCTION LABOURERS IN THE COUNTY OF WATERLOO FOR THIS RESPONDENT. (SEE THE NADECO LIMITED CASE BOARD FILE NO. 14379-67-R, DECISION DATED APRIL 15TH, 1968.) THE RESPONDENT HAS INFORMED THE BOARD THAT ON THE DATE OF THE MAKING OF THIS APPLICATION, THE ONLY TRADES ON THE JOB SITE WERE CARPENTERS AND CONSTRUCTION LABOURERS. HAVING REGARD TO SECTION 6 (1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(MAY 10, 1968).

14605-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. THE FOUNDATION COMPANY OF CANADA LIMITED (RESPONDENT).

5. THE PARTIES TO THIS APPLICATION WERE ADVISED THAT THE BOARD WAS CONSIDERING ADDING THE PROVISIONAL COUNTY OF HALIBURTON TO ITS EXISTING REGULAR BOARD AREA OF THE COUNTIES OF PETERBOROUGH AND VICTORIA. THE PARTIES HAVE NOT MADE REPRESENTATIONS ON THIS MATTER AND THEY HAVE NOT REQUESTED A HEARING. AFTER CAREFULLY CONSIDERING THE MATTER, THE BOARD, THEREFORE, FURTHER FINDS THAT ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(MAY 24, 1968).

14635-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (APPLICANT) V. O'NEIL STEEL (RESPONDENT),.

6. IN THIS APPLICATION THE APPLICANT PROPOSES A BARGAINING UNIT COVERING ESTABLISHED BOARD GEOGRAPHIC AREA #10. IN LIDO PLASTERING Co. LTD. BOARD FILE 14569-68-R, REPORTED ON PAGE 180, THE BOARD GAVE NOTICE OF ITS INTENTION TO ENLARGE GEOGRAPHIC AREA #10 BY THE ADDITION OF THE TOWNSHIPS OF SOUTH MONAGHAN AND ALNWICK IN THE COUNTY OF NORTH-UMBERLAND.

IN THESE CIRCUMSTANCES, THE BOARD THEREFORE FURTHER FINDS THAT ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(MAY 30, 1968).

STATISTICAL TABLES FOR MAY 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		MAY 1968	1ST 2 MONTHS OF 1968-69	FISCAL YEAR 1967-68
I.	CERTIFICATION	72	180	178
II.	DECLARATION TERMINATING BARGAINING RIGHTS	4	8	20
III.	DECLARATION OF SUCCESSOR STATUS	4	7	-
IV.	DECLARATION THAT STRIKE UNLAWFUL	11	13	9
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	3	3	3
VI.	CONSENT TO PROSECUTE	9	13	26
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	18	38	17
VIII.	MISCELLANEOUS	<u>5</u>	<u>12</u>	<u>8</u>
TOTAL		<u>126</u>	<u>274</u>	<u>261</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		MAY 1968	1ST 2 MONTHS OF 1968-69	FISCAL YEAR 1967-68
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		95	193	180

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		MAY 1968	1ST 2 MTHS OF FISCAL YEAR 1968-69	1967-68
I.	CERTIFICATION	88	186	164
II.	DECLARATION TERMINATING BARGAINING RIGHTS	3	10	10
III.	DECLARATION OF SUCCESSOR STATUS	-	7	1
IV.	DECLARATION THAT STRIKE UNLAWFUL	10	12	9
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	2	2	1
VI.	CONSENT TO PROSECUTE	4	16	10
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	15	40	34
VIII.	MISCELLANEOUS	<u>3</u>	<u>13</u>	<u>15</u>
TOTAL		<u>125</u>	<u>286</u>	<u>244</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>MAY 1ST 2 MTHS FISCAL YR.</u>			<u>MAY 1ST 2 MTHS FISCAL</u>		
	<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>	<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>
<u>CERTIFICATION</u>						
GRANTED	49	116	124	1603	5064	3985
DISMISSED	30	48	30	507	869	1895
WITHDRAWN	<u>9</u>	<u>22</u>	<u>10</u>	<u>250</u>	<u>481</u>	<u>267</u>
TOTAL	<u>88</u>	<u>186</u>	<u>164</u>	<u>2460</u>	<u>6414</u>	<u>6147</u>

II. TERMINATION
OF BARGAINING
RIGHTS

GRANTED	1	5	6	22	121	123
DISMISSED	2	4	4	6	27	38
WITHDRAWN	<u>-</u>	<u>1</u>	<u>-</u>	<u>-</u>	<u>19</u>	<u>-</u>
TOTAL	<u>3</u>	<u>10</u>	<u>10</u>	<u>28</u>	<u>167</u>	<u>161</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
		MAY 1968	1ST 2 MONTHS OF 1968-69	FISCAL YR. 1967-68
III.	<u>DECLARATION THAT STRIKE UNLAWFUL</u>			
	GRANTED	1	1	-
	DISMISSED	2	2	2
	WITHDRAWN	<u>7</u>	<u>9</u>	<u>7</u>
	TOTAL	<u>10</u>	<u>12</u>	<u>9</u>
IV.	<u>DECLARATION THAT LOCKOUT UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	1	1	-
	WITHDRAWN	<u>1</u>	<u>1</u>	<u>1</u>
	TOTAL	<u>2</u>	<u>2</u>	<u>1</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	2	4	1
	DISMISSED	-	4	-
	WITHDRAWN	<u>2</u>	<u>8</u>	<u>9</u>
	TOTAL	<u>4</u>	<u>16</u>	<u>10</u>
VI.	<u>COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)</u>			
	GRANTED	-	1	4
	DISMISSED	3	11	4
	WITHDRAWN	<u>12</u>	<u>28</u>	<u>10</u>
	TOTAL	<u>15</u>	<u>40</u>	<u>18</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MAY 1968	1ST 2 MONTHS 1968-69	FISCAL YR. 1967-68
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	4	1
POST-HEARING VOTE	1	7	12
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	-	2
POST-HEARING VOTE	5	7	5
BALLOTS NOT COUNTED	-	-	-
 TOTAL	<u>7</u>	<u>18</u>	<u>20</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	MAY 1968	1ST 2 MONTHS 1968-69	FISCAL YR. 1967-68
*RESPONDENT UNION SUCCESSFUL	-	-	1
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>3</u>	<u>3</u>
 TOTAL	<u>1</u>	<u>3</u>	<u>4</u>

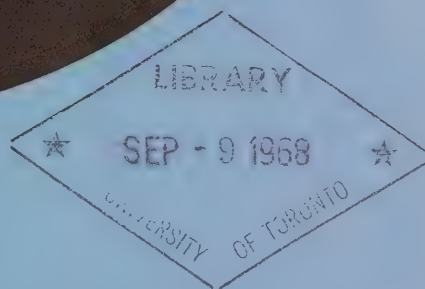
*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDER

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AIRLINE FOOTWEAR INDUSTRIES, A
DIVISION OF J. D. CARRIER SHOE
COMPANY LIMITED

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HERBERT BRUNE CONSTRUCTION LTD.

278

14642-68-R:

AIRCRAFT APPLIANCES AND EQUIPMENT
LIMITED

280

14653-68-R:

LAIDLAW TRANSPORT LIMITED

281

14660-68-R:

CANADIAN PACIFIC HOTELS LIMITED

282

14679-68-R:

RCA VICTOR COMPANY, LTD.

284

TERMINATION

14463-68-R:

NATIONAL STARCH AND CHEMICAL CO.
(CANADA) LTD.

285

14579-68-R:

BROTHERHOOD OF SEALANT WORKER'S OF
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287

14637-68-R:

LLOYD JOHNSON'S TOWN AND COUNTRY
AUTO BODY LIMITED

288

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14613-68-U:

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ANTONIO FERRONATO

290

14703-68-U:

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MOTORS LIMITED, T.H. GLEN,
TORONTO, BRITISH AMERICAN OIL CO.
LIMITED, K. G. COOKE, HAMILTON,
WESTINGHOUSE, L. G. KERR, DRYDEN,
DRYDEN PAPER CO. LIMITED, N.H.
WAGE, COPPER CLIFF, INTERNATIONAL
NICKEL CO. LTD., J. LAWLER,
HAMILTON, STEEL CO. OF CANADA, J.L.
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STEEL CO.

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14704-68-U:

F. W. MURRAY

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GENERAL TRUCK DRIVERS UNION - LOCAL
879 AND KNIPFEL CARTAGE COMPANY
LIMITED AND THIBODEAU EXPRESS LIMITED
LIMITED

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14318-67-U:

KOKOTOW LUMBER LIMITED, (SAWMILL
OPERATIONS KENOAGAMI)

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14521-68-U:

KOKOTOW LUMBER SAWMILL (KENOGAMI
SAWMILL.

301

14396-67-U:

HIRAM WALKER AND SONS LTD.

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14464-68-U:

BRACEBRIDGE STEEL FABRICATING
COMPANY, A DIVISION OF WILSON
ENGINEERING AND FABRICATING
LIMITED, WINONA, ONTARIO

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14480-68-U:

BRACEBRIDGE STEEL FABRICATING
COMPANY, A DIVISION OF WILSON
ENGINEERING AND FABRICATING,
LIMITED, WINONA, ONTARIO

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14540-68-U:

NEWTEX LTD.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING JUNE 1968

BARGAINING AGENTS CERTIFIED DURING JUNE

NO VOTE CONDUCTED

14276-67-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. DECORATIVE LAMINATES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AT PORT CREDIT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 8TH, 1968, AND THE REPRESENTATIONS OF THE PARTIES.

14277-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT ITS SALES AND SERVICE STORE AT CHATHAM, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, AND SALESMEN." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES):

(SEE INDEXED ENDORSEMENT PAGE 262).

14369-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF VICTORIA (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT CLERK TREASURER, ASSISTANT CLERK TREASURER, DEPUTY TREASURER, ASSESSMENT COMMISSIONER, SAFETY INSPECTOR, EMERGENCY MEASURES CO-ORDINATOR, COUNTY ENGINEER, ENGINEERING ASSISTANT, DIRECTOR OF WELFARE AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (16 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14370-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE COUNTY OF VICTORIA (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS VICTORIA COUNTY HOME FOR THE AGED AT LINDSAY, SAVE AND EXCEPT THE SUPERINTENDENT, MATRON, CHIEF ENGINEER, REGISTERED NURSES AND OFFICE STAFF." (46 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14426-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CHRYSLER CANADA LTD. ETOBICOKE CASTING PLANT (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF ETOBICOKE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PLANT NURSE, SECURITY GUARDS, PRIVATE SECRETARY TO THE PLANT MANAGER, SECRETARY TO THE MANAGER OF INDUSTRIAL ENGINEERING, SECRETARY TO THE PLANT COMPTROLLER, SECRETARY TO THE PERSONNEL MANAGER, BUDGET CLERK, AND ANALYST - METHODS AND STANDARDS." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR THE PURPOSE OF CLARITY THE BOARD NOTED THE FURTHER AGREEMENT OF THE PARTIES THAT SECRETARY TO THE QUALITY CONTROL MANAGER AND INDUSTRIAL ENGINEERING CLERKS ARE INCLUDED IN THE BARGAINING UNIT.

14427-68-R: LOCAL 556 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS AFL - CIO - CLC (APPLICANT) V. THE BOARD OF WATER COMMISSIONERS, CITY OF WELLAND (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT SAVE AND EXCEPT DEPARTMENT HEADS AND PERSONS ABOVE THE RANK OF DEPARTMENT HEAD." (6 EMPLOYEES IN THE UNIT).

BASED ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS MADE AT THE HEARING IN THIS MATTER, THE BOARD NOTED THE AGREEMENT OF THE PARTIES.

14519-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. JIM DAVIDSON MOTORS LTD. (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SALES MANAGERS, PERSONS ABOVE THE RANK OF SALES MANAGER AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 268).

14557-68-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS INTERNATIONAL UNION, A.F.L., C.I.O., C.L.C., IN ST. CATHARINES, ONT. (APPLICANT) V. WESTERN TAVERN (RESPONDENT).

UNIT: "ALL BEVERAGE ROOM EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT MANAGERS, PERSONS ABOVE THE RANK OF MANAGER." (1 EMPLOYEE)

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14560-68-R: READY MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MILLWORK AND BUILDING SUPPLIES COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, RETAIL STORE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 273)

14568-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. DESCHENES STRUCTURES LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

14576-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. CORTINA PLASTERING LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14577-68-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 189, N.C.C.L. (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAGERSVILLE, SAVE AND EXCEPT FOREMEN AND DISPATCHERS, PERSONS ABOVE THE RANK OF FOREMAN AND DISPATCHER, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (30 EMPLOYEES IN THE UNIT).

14578-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:
CLC (APPLICANT) V. JERRYS CANTEEN SERVICE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT SUPERVISORS AND THOSE ABOVE THE RANK OF SUPERVISOR." (8 EMPLOYEES IN THE UNIT).

14581-68-R: GENERAL TRUCK DRIVERS UNION LOCAL 938, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. L. MILNE TRUCKING (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

14583-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. LONDON FURNITURE CO. LIMITED (RESPONDENT).

UNIT: "ALL WAREHOUSE EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (11 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE TERM "WAREHOUSE EMPLOYEES" INCLUDES WAREHOUSEMEN, SHIPPERS, RECEIVERS, DRIVERS, AND HELPERS.

14584-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. GAP CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14587-68-R: ERIE SHOE EMPLOYEES ASSOCIATION (APPLICANT) V. ERIE SHOE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT COLBORNE, SAVE AND EXCEPT FOREMEN, FLOORLADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FLOORLADY, AND OFFICE STAFF." (60 EMPLOYEES IN THE UNIT).

14591-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. HERBERT BRUNE CONSTRUCTION LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 278).

14594-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ISLAND PARK FOOD MART LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT OTTAWA, SAVE AND EXCEPT STORE MANAGERS, PERSONS ABOVE THE RANK OF STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND OFFICE STAFF." (13 EMPLOYEES IN THE UNIT).

14595-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ISLAND PARK FOOD MART LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT OTTAWA REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

14612-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. ST. LAWRENCE STARCH COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT CREDIT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OPERATING ENGINEERS, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (200 EMPLOYEES IN THE UNIT).

14616-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ERIE SAND & GRAVEL LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE EMPLOY OF THE RESPONDENT AT ITS PIT OPERATIONS IN MERSEA TOWNSHIP SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE CLERK AND SCALEMAN IS INCLUDED IN THE TERM OFFICE STAFF AND IS THEREFORE EXCLUDED FROM THE BARGAINING UNIT.

14618-68-R: CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. HANDY BROS. HEATING, COOLING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN ITS SHEET METAL OPERATIONS EMPLOYED AT OR WORKING OUT OF BLENHEIM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

14631-68-R: THE DRAFTMEN'S ASSOCIATION OF ONTARIO, LOCAL 164
AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C.
(APPLICANT) V. HORN ELEVATOR LIMITED (RESPONDENT).

UNIT: "ALL DRAFTSMEN IN THE EMPLOY OF THE RESPONDENT IN ITS
ENGINEERING DEPARTMENT IN METROPOLITAN TORONTO SAVE AND EXCEPT
SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (21
EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14634-68-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING
SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS,
I.B. OF T. (APPLICANT) V. MUNDO DEVELOPMENTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OTTAWA, SAVE AND
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES
STAFF." (9 EMPLOYEES IN THE UNIT).

14638-68-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL 419 OF THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN &
HELPERS OF AMERICA (APPLICANT) V. GRAHAM FOOD PRODUCTS, LIMITED
TRADING AS E. W. HICKESON & CO. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE
AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND
SALES STAFF." (29 EMPLOYEES IN THE UNIT).

14642-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V.
AIRCRAFT APPLIANCES AND EQUIPMENT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE
AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES
STAFF." (131 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 280).

14644-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. SIRRAH LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS MARINE OPERATIONS WORKING
AT OR OUT OF THE CITY OF WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE
THE RANK OF FOREMAN, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14645-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. CUT TO
SIZE PLYWOOD AND VENEER LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PEMBROKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (29 EMPLOYEES IN THE UNIT).

14649-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS LOCAL 141 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GRAHAM FOOD PRODUCTS, LTD. TRADING AS E. W. HICKESON & CO. (LONDON) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

15650-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #249 (APPLICANT) V. POLARIS STEEL LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14651-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. WEST FRONT CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

14655-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. MARCHMOUNT CONSTRUCTION LIMITED (RESPONDENT) V. AN EMPLOYEE (OBJECTOR).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14659-68-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V. RYERSON POLYTECHNICAL INSTITUTE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14661-68-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. STRATHMERE LODGE, MIDDLESEX COUNTY HOME FOR AGED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF STRATHMERE LODGE, STRATHROY, ONTARIO, SAVE AND EXCEPT HOUSEKEEPER, ADJUVANT, CRAFT INSTRUCTOR, CHIEF CHEF, CHIEF ENGINEER, PURCHASING AGENT, STOCK KEEPER, SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISORS, REGISTERED NURSES, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND STUDENTS EMPLOYED DURING SCHOOL VACATION PERIOD." (80 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14664-68-R: ELGIN MOTORS INDEPENDENT SALESMAN'S ASSOCIATION (APPLICANT)
V. ELGIN MOTORS COMPANY LIMITED (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT SALES MANAGERS AND THOSE ABOVE THE RANK OF ASSISTANT SALES MANAGER." (25 EMPLOYEES IN THE UNIT).

14665-68-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT)
V. MAURICE H. ROLLINS CONSTRUCTION LTD. COMMERCIAL DIVISION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS AND CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

THE RESPONDENT HAS INFORMED THE BOARD THAT ON THE DATE OF THE MAKING OF THIS APPLICATION, THE ONLY TRADES ON THE JOB SITES WERE CONSTRUCTION LABOURERS AND CARPENTERS. HAVING REGARD TO SECTION 6(1) OF THE LABOUR RELATIONS ACT THE BOARD FOUND THE ABOVE UNIT TO BE APPROPRIATE.

14666-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT)
V. GAILREY HOLDINGS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14680-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. H. J. O'CONNELL LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

14683-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW (APPLICANT) V. CANADIAN TRAILMOBILE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PLANT PROTECTION EMPLOYEES." (18 EMPLOYEES IN THE UNIT).

14686-68-R: GENERAL TRUCK DRIVERS UNION LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. EVANS MERCURY SALES LIMITED (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SALES MANAGERS, PERSONS ABOVE THE RANK OF SALES MANAGER AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

14691-68-R: READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BETZ CUT STONE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

14692-68-R: READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. BETZ CUT STONE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (8 EMPLOYEES IN THE UNIT).

14693-68-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 124 (APPLICANT) V. FRANK LICARI & SONS (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

14699-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. EGANVILLE CREAMERY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT EGANVILLE, SAVE AND EXCEPT PLANT MANAGERS, PERSONS ABOVE THE RANK OF PLANT MANAGER, AND OFFICE STAFF." (22 EMPLOYEES IN THE UNIT).

14713-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. F. M. F. FORMING COMPANY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14717-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1089 (APPLICANT) V. C.A. PITTS GENERAL CONTRACTOR LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14731-68-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, A.F.L.-C.I.O.-C.L.C., LOCAL UNION 269 (APPLICANT) V. MURPHY BROTHERS PLUMBING AND HEATING LTD. (RESPONDENT).

UNIT: "ALL SHEET METAL WORKERS AND SHEET METAL APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14749-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. KINNEAR MANUFACTURING COMPANY OF CANADA LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14752-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. DONALD E. KELLER OPERATING UNDER THE FIRM NAME AND STYLE OF DON KELLER CONSTRUCTION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

14447-68-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. COCA-COLA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT OFFICE STAFF, SPECIAL SALESMEN, FOREMEN, PERSONS ABOVE THE RANKS OF SPECIAL SALESMAN AND FOREMAN." (307 EMPLOYEES IN THE UNIT).

THE BOARD FURTHER NOTED THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT THAT CHEMISTS AND LABORATORY TECHNICIANS EMPLOYED IN THE QUALITY CONTROL DEPARTMENT ARE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	299
NUMBER OF PERSONS WHO CAST BALLOTS	294
NUMBER OF SPOILED BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR	
OR APPLICANT	162
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	129

(SEE INDEXED ENDORSEMENT PAGE 264).

14527-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. WELLAND FORGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (43 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	41
NUMBER OF PERSONS WHO CAST BALLOTS	41
NUMBER OF BALLOTS MARKED IN FAVOUR OF	
APPLICANT	28
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	13

14562-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. KRALINATOR FILTERS LIMITED (RESPONDENT) V. CANADIAN STEEL WORKERS' UNION No. 191, N.C.C.L. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, INSPECTORS, EMPLOYEES IN THE ENGINEERING DEPARTMENT, OFFICE AND SALES STAFF, PERSONS EMPLOYED FOR TWENTY-FOUR HOURS PER WEEK OR LESS AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (291 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT CONTAINED IN THE LETTER FROM THE RESPONDENT DATED JUNE 13TH, 1968, AND THE LETTER FROM THE APPLICANT DATED JUNE 17TH, 1968).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	272
NUMBER OF PERSONS WHO CAST BALLOTS	262
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	150
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	112

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

14182-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 (APPLICANT) V. NORTH YORK GENERAL HOSPITAL (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS PLANT AT METROPOLITAN TORONTO, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	2

14313-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE QUEEN ELIZABETH HOSPITAL, TORONTO (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDER-GRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN AND FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN AND FORELADY, STATIONARY ENGINEERS AND PERSONS PRIMARILY

ENGAGED AS THEIR HELPERS IN THE BOILER ROOM, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (315 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		244
NUMBER OF PERSONS WHO CAST BALLOTS	217	
BALLOTS SEGREGATED AND NOT COUNTED	3	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	139	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	74	

14475-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. CASWELL HOTEL (SUDBURY) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (63 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		38
NUMBER OF PERSONS WHO CAST BALLOTS	40	
BALLOTS SEGREGATED AND NOT COUNTED	2	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	28	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	10	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JUNE

NO VOTE CONDUCTED

14006-67-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION LOCAL 268 (APPLICANT) V. DRYDEN DISTRICT GENERAL HOSPITAL (RESPONDENT). (103 EMPLOYEES).

14032-67-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. RAINEE MANUFACTURING PRODUCTS, LTD. (RESPONDENT).

UNIT: "ALL THE EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (80 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 259).

14132-67-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE CANADIAN NATIONAL INSTITUTE FOR THE BLIND (RESPONDENT) V. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (INTERVENER). (73 EMPLOYEES).

14462-68-R: HOTEL AND RESTAURANT EMPLOYEE'S AND BARTENDERS' INTERNATIONAL UNION, LOCAL 756 A.F.L., C.I.O., C.L.C., IN ST. CATHARINES, ONTARIO (APPLICANT) V. ANCHORAGE MOTOR HOTEL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA-ON-THE-LAKE, SAVE AND EXCEPT OWNERS, MANAGERS AND PERSONS ABOVE THE RANKS OF OWNER AND MANAGER." (6 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 267).

14506-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. NORTH YORK CHEVROLET LIMITED (RESPONDENT). (17 EMPLOYEES).

14508-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. PARKWOOD MOTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (18 EMPLOYEES).

14510-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS LOCAL UNION 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. PINE HILL AUTO LTD. (RESPONDENT). (2 EMPLOYEES).

14512-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ROY FOSS MOTORS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (18 EMPLOYEES).

14515-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GORRIES CHEVROLET & OLDSMOBILE LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (25 EMPLOYEES).

14543-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. RIVERDALE MERCURY SALES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (14 EMPLOYEES).

14597-68-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.-C.I.O. - C.L.C. (APPLICANT) V. KOKOTOW LUMBER LIMITED (RESPONDENT) (13 EMPLOYEES).

14653-68-R: LAIDLAW TRANSPORT EMPLOYEES ASSOCIATION (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION No. 199, N.C.C.L. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF THE TOWNSHIP OF PUSLINCH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, DISPATCHERS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (51 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 281).

14658-68-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 199, N.C.C.L. (APPLICANT) V. CLASS CARTAGE (RESPONDENT). (9 EMPLOYEES).

14660-68-R: TORONTO PRINTING PRESSMEN AND ASSISTANTS' UNION No. 10 (APPLICANT) V. CANADIAN PACIFIC HOTELS LIMITED (RESPONDENT) V. HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 299, TORONTO, OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION (INTERVENER). (3 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 282).

14667-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. LA SCALA CONSTRUCTION LIMITED (RESPONDENT). (NO EMPLOYEES).

14676-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. CURRIE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF ITS PLANT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, LABORATORY STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (25 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14679-68-R: RCA VICTOR EMPLOYEES' ASSOCIATION (APPLICANT) V. RCA VICTOR COMPANY, LTD. (RESPONDENT). (97 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 284).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

14531-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. R. LAI

LUMBER CO. LIMITED (RESPONDENT) V. CANADIAN WOODWORKERS' UNION No. 167,
N.C.C.L. (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND OTHER CLERICAL OR CONFIDENTIAL EMPLOYEES, WITH RESPECT TO RATES OF PAY, HOURS OF WORK AND OTHER WORKING CONDITIONS, AT ITS PLANT NEAR NORTH BAY, ONTARIO." (63 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	64
NUMBER OF PERSONS WHO CAST BALLOTS	61
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	7
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	53

14550-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CANADA
CYCLE & MOTOR COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL 796 (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS EMPLOYED BY THE
RESPONDENT AT ITS WESTON PLANT, SAVE AND EXCEPT A CHIEF ENGINEER ABOVE
THE RANK OF SECOND CLASS." (5 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON	
VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	3

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13786-67-R: CANADIAN TEXTILE COUNCIL (APPLICANT) V. THE WATSON MANUFAC-
TURING COMPANY OF PARIS LIMITED (RESPONDENT) V. TEXTILE WORKERS UNION OF
AMERICA, CLC, AFL-CIO (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STATIONARY ENGINEERS COVERED BY THE BOARD'S CERTIFICATE IN FAVOUR OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS DATED NOVEMBER 9, 1965." (255 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	238
NUMBER OF PERSONS WHO CAST BALLOTS	231
NUMBER OF SPOILED BALLOTS	3

BALLOTS SEGREGATED AND NOT COUNTED	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT CANADIAN TEXTILE COUNCIL	107
NUMBER OF BALLOTS MARKED AGAINST APPLICANT CANADIAN TEXTILE COUNCIL	113

(SEE INDEXED ENDORSEMENT PAGE 257).

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JUNE

14415-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. BARWOOD SALES (ONTARIO) LTD. (RESPONDENT). (14 EMPLOYEES).

14617-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. PAUL WILLISON TORONTO LTD. (RESPONDENT). (15 EMPLOYEES).

14668-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. CLAIRSON CONSTRUCTION COMPANY LIMITED (RESPONDENT) V. CLAIRSON EMPLOYEES' ASSOCIATION (INTERVENER). (8 EMPLOYEES).

14670-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. CHINOOK CHEMICALS CORPORATION LIMITED (RESPONDENT). (5 EMPLOYEES).

14710-68-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. SILVER BROS. TRANSPORT (RESPONDENT). (10 EMPLOYEES).

14759-68-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION No. 124; OTTAWA-HULL (APPLICANT) V. A.N. SHAW & SONS (EASTERN) LIMITED (RESPONDENT). (9 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

OF DURING JUNE

14463-68-R: VICTOR P DRURY & ALBERT NANGINI (APPLICANTS) V. INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 424 (RESPONDENT) V. NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD. (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES AT NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD. PLANT LOCATED AT 371 WALLACE AVENUE, TORONTO 9, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND LABORATORY TECHNICIANS." (38 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	37
NUMBER OF PERSONS WHO CAST BALLOTS	36
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	17
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	19

(SEE INDEXED ENDORSEMENT PAGE 285).

14579-68-R: ROBERT J. GILKES (APPLICANT) V. BROTHERHOOD OF SEALANT
WORKER'S OF ONTARIO (CANADIAN-MARIETTA PRESSTITE DIVISION, GEORGETOWN)
(RESPONDENT). (14 EMPLOYEES) (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 287).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JUNE

14662-68-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLI-
CANT) V. UNION GAS COMPANY OF CANADA LIMITED (RESPONDENT) V. NATIONAL
UNION OF NATURAL GAS WORKERS, LOCAL 161, C.L.C. (PREDECESSOR TRADE UNION).
(GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JUNE

14647-68-U: EASTERN ELECTRIC CONSTRUCTION LIMITED (APPLICANT) V. THE
EMPLOYEES OF EASTERN ELECTRIC CONSTRUCTION LIMITED, FLOYD ALEXANDER
ET AL (RESPONDENTS). (WITHDRAWN).

14672-68-U: LIVINGSTON INDUSTRIES LIMITED (APPLICANT) V. G. ADMIRAL ET
AL (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

JUNE

14656-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL
2486 (APPLICANT) V. INSPIRATION LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JUNE

14545-68-U: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466
(APPLICANT) V. PRECISION DATA CARDS LIMITED & Co. (RESPONDENT).
(DISMISSED).

14609-68-U: CANADIAN PITTSBURGH INDUSTRIES LIMITED (APPLICANT) V.
LEONARD JOHN BUCK, GEORGE BROOKE, GEORGE JOHNSTONE, JOHN RAYMOND KNOX,
ALFRED PAUL MARTIN, ARTHUR MORTON, RONALD REVELL, THOMAS FRED SCOTT AND
ALBERT VALENTINO (RESPONDENTS). (WITHDRAWN).

14613-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. CORTINA PLASTERING LIMITED AND ANTONIO FERRONATO (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 290).

14621-68-U: CANADIAN PITTSBURGH INDUSTRIES LIMITED (APPLICANT) V. JOSEPH COOPER, BURTON DARREL DEGAN, WILLIAM FOUNTAIN, KEITH FREEBORN, GORDON HOGG, RICHARD KEIM, SIEGFRIED KOHL, HAROLD ROY MACAULAY, GARY MANDERS, VERDON BYRON O'BRIEN, KEIZO THOMAS OTANI, EDWARD ROSE, WILLIAM THOMPSON, RICHARD JOHN WILSON AND DANIEL WOLNY (RESPONDENTS). (WITHDRAWN).

14623-68-U: CANADIAN PITTSBURGH INDUSTRIES LIMITED (APPLICANT) V. EUGENE BALAZS, WILLIAM ORVIL BRYANT, JAMES GREGORY CAUGHLIN, GEORGE CROZIER, CARMAN DAWDY, LARRY DOXTUTOR, CUNNINGHAM FRASER, JOHN WELDON GRIDLEY, JOSEPH HARDING, HERBERT HACT, CHARLES BYRON HOLMES, CLARENCE JEAN, LEONARD OSWALD JONES, MICHAEL KATZENMAYER, WILLIAM LEWIS, LESLIE MARTIN, RONALD MCKINNON, EDWARD NADOLSKI, FREDERICK JOHN NEWFIELD, FRANK NOVAKOWSKI, ERNEST EARLE OAKLEY, BRIAN WILLIAM PARKINSEN, FREDERICK PEARCE, STEVEN PISARA, FRANK RUSSO, LEONARD SHOEBOOTH AND GARRY GEORGE WILLIAMS, (RESPONDENTS). (WITHDRAWN).

14646-68-U: THE ALGOMA STEEL CORPORATION, LIMITED (APPLICANT) V. JAMES ARDITO ET AL (RESPONDENTS). (WITHDRAWN).

14674-68-U: LIVINGSTON INDUSTRIES LIMITED (APPLICANT) V. TOM LANGRELL, WAYNE ROSENHARD, GARY JACOBS AND JOHN GRABSTAS (RESPONDENTS). (WITHDRAWN).

14703-68-U: JAMES SPEIRS FRANK MAULE (APPLICANTS) V. A.M. WOOLFREY, OSHAWA, GENERAL MOTORS LIMITED, T. H. GLEN, TORONTO, BRITISH AMERICAN OIL CO. LIMITED, K. G. COOKE, HAMILTON, WESTINGHOUSE, L. G. KERR, DRYDEN, DRYDEN PAPER CO. LIMITED, N.H. WAGE, COPPER CLIFF, INTERNATIONAL NICKEL CO. LTD., J. LAWLER, HAMILTON, STEEL CO. OF CANADA, J.L. MCINTYRE, SAULT STE. MARIE, ALGOMA STEEL CO. (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 294).

14704-68-U: JAMES SPEIRS FRANK MAULE (APPLICANTS) V. F. W. MURRAY (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 297).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

JUNE

14204-67-U: JOHN BALZER (COMPLAINANT) V. GENERAL TRUCK DRIVERS UNION - LOCAL 879 AND KNIPFELL CARTAGE COMPANY LIMITED AND THIBODEAU EXPRESS

LIMITED (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 298).

14237-67-U: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (COMPLAINANT) V. CARLAW FOOTWEAR INDUSTRIES, J. D. CARRIER SHOE COMPANY LIMITED, CARSINI SHOE COMPANY LIMITED, COUNTRY LANE SHOE CO. AND DOREEN SHOE CO. LIMITED (RESPONDENTS). (WITHDRAWN).

14285-67-U: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W. (COMPLAINANT) V. PROGRESSIVE WELDER (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

14318-67-U: THE LUMBER & SAWMILL WORKERS' UNION LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA-A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. KOKOTOW LUMBER LIMITED, (SAWMILL OPERATIONS KENOGAMI) (RESPONDENT).

- AND -

14521-68-U: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. KOKOTOW LUMBER SAWMILL (KENOGAMI SAWMILL (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 301).

14396-67-U: MRS. MARY ANN WORTLEY (COMPLAINANT) V. HIRAM WALKER AND SONS LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 302).

14459-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. B. & W. HEAT TREATING LIMITED (RESPONDENT). (WITHDRAWN).

14464-68-U: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, (AFL, CIO, CLC.) (COMPLAINANT) V. BRACEBRIDGE STEEL FABRICATING COMPANY, A DIVISION OF WILSON ENGINEERING AND FABRICATING LIMITED, WINONA, ONTARIO (RESPONDENT) (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 304).

14480-68-U: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, (AFL, CIO, CLC.) (COMPLAINANT) V. BRACEBRIDGE STEEL FABRICATING COMPANY, A DIVISION OF WILSON ENGINEERING AND FABRICATING, LIMITED, WINONA, ONTARIO (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 304).

14490-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. ONORIO & COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

14530-68-U: RETAIL AND FOOD EMPLOYEES' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. KITCHENER FOODS LTD. (RESPONDENT). (WITHDRAWN).

14540-68-U: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO (COMPLAINANT) V. NEWTEX LTD. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 305).

14544-68-U: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466 (COMPLAINANT) V. PRECISION DATA CARDS LIMITED (RESPONDENT). (WITHDRAWN).

14582-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ALLANSON MANUFACTURING CORPORATION LTD. (RESPONDENT). (WITHDRAWN).

14599-68-U: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. PINE HILL AUTO LTD. (RESPONDENT). (WITHDRAWN).

14632-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. KENNETH S. FRASER COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

14636-68-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U. (COMPLAINANT) V. THE UNIVERSITY OF WESTERN ONTARIO (RESPONDENT). (WITHDRAWN).

14639-68-U: THE OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 343 (COMPLAINANT) V. THE CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 (RESPONDENT). (WITHDRAWN).

14714-68-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. EGANVILLE CREAMERY LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATION FOR ADDITION OF A PROVISION TO A COLLECTIVE AGREEMENT

PURSUANT TO SECTION 33(2) DISPOSED OF DURING JUNE

14681-68-M: LIVINGSTON INDUSTRIES LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 306).

14682-68-M: LIVINGSTON INDUSTRIES LIVINGSTON INDUSTRIES LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 307).

APPLICATION UNDER SECTION 34(3) DISPOSED OF DURING JUNE

14487-68-M: YORK GEARS LIMITED (APPLICANT) V. THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 308).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

14694-68-M: FOOD HANDLERS' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFFILIATED WITH THE AFL - CIO, AND POWER SUPER MARKETS LIMITED (APPLICANTS). (GRANTED).

JURISDICTIONAL DISPUTE

14278(A)-67-JD: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 1687 (COMPLAINANT) V. FALCONBRIDGE NICKEL MINES LIMITED AND SUDBURY MINE, MILL AND SMELTER WORKERS' UNION LOCAL 598 (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 313).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13860-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. HI WAY MARKET LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 320).

14344-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GOODYEAR SERVICE STORE, A DIVISION OF GOODYEAR TIRE AND RUBBER COMPANY LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 322).

14404-68-R: INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. MORTIMER LIMITED (RESPONDENT) V. LOCAL UNION #173, INTERNATIONAL BROTHERHOOD OF BOOKBINDERS (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

14428-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. PRE-CON MURRAY LIMITED (RESPONDENT) V. LOCAL NO. 7, OTTAWA, ONTARIO, BRICKLAYERS, MASONS AND PLASTERERS I.U. OF A. (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #2). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 323).

14476-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. THE CORPORATION OF THE CITY OF WELLAND (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 1115 (INTERVENER).
(REQUEST DENIED).

14532-68-R: MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. FRITO-LAY INC. (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 324).

14534-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. FORENTA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

(SEE INDEXED ENDORSEMENT PAGE 325).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

14176-67-U: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION - LOCAL 261 (COMPLAINANT) V. THE TALISMAN MOTOR INN (RESPONDENT).
(REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

13786-67-R: CANADIAN TEXTILE COUNCIL (APPLICANT) V. THE WATSON MANUFACTURING COMPANY OF PARIS LIMITED (RESPONDENT) V. TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS G. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: R. K. ROWLEY AND ELLIOTT POSEN FOR THE APPLICANT, E. L. STRINGER AND F. ATKINSON FOR THE RESPONDENT, L. A. MACLEAN, CHARLES CLARK AND ELVIO DALLORTO FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 24, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH BOTH THE APPLICANT AND THE INTERVENER APPLIED TO BE CERTIFIED FOR CERTAIN EMPLOYEES OF THE RESPONDENT. THE INTERVENER'S APPLICATION FOR CERTIFICATION WAS DISMISSED BY THE BOARD ON DECEMBER 28TH, 1967 FOR THE REASONS CONTAINED IN THAT DECISION. HOWEVER, WHILE THE INTERVENER'S APPLICATION FOR CERTIFICATION WAS DISMISSED, THE INTERVENER REMAINED A PARTY TO THESE PROCEEDINGS AND CONTINUED TO PARTICIPATE IN ALL THE HEARINGS WHICH FOLLOWED THE BOARD'S DECISION ABOVE REFERRED TO. THE INTERVENER'S RIGHTS TO CONTINUE AS A PARTY WERE NOT EXTINGUISHED BY THE DISMISSAL OF THE INTERVENER'S APPLICATION FOR CERTIFICATION. THE BOARD IN ITS DECISION OF DECEMBER

28, 1967 DIRECTED THAT A REPRESENTATION VOTE BE TAKEN OF CERTAIN EMPLOYEES OF THE RESPONDENT AND THOSE EMPLOYEES WERE ASKED TO INDICATE WHETHER OR NOT THEY WISHED TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

2. AT THE TIME THE VOTE WAS DIRECTED, THE BOARD ALSO AUTHORIZED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF PERSONS CLASSIFIED BY THE RESPONDENT AS ASSISTANT FOREMEN, LINE SUPERVISORS AND CLERKS.

3. ON THE TAKING OF THE REPRESENTATION VOTE, THE MAJORITY OF THE EMPLOYEES IN THE BARGAINING UNIT VOTED AGAINST THE APPLICANT.

4. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE, THE APPLICANT MADE CERTAIN CHARGES AGAINST THE RESPONDENT, THE INTERVENER AND THE RETURNING OFFICER WITH RESPECT TO THE TAKING OF THE VOTE. THE APPLICANT ALSO FILED OBJECTIONS AGAINST THE RESPONDENT, THE INTERVENER AND THE EXAMINER WITH RESPECT TO THE REPORT OF THE EXAMINER DATED MAY 15TH, 1968, IN THIS MATTER.

5. THIS MATTER CAME ON FOR HEARING AT BRANTFORD ON JUNE 18TH, 1968 TO INQUIRE INTO THE ALLEGATIONS OF UNFAIR CONDUCT MADE BY THE APPLICANT.

6. THE FACTS RELATING TO THE OBJECTIONS CONCERNING THE FIELD OFFICER AND CERTAIN ALLEGATIONS MADE AGAINST THE INTERVENER AND THE RESPONDENT HAVING BEEN AGREED TO, AND THE PARTIES HAVING HAD FULL OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO THOSE FACTS, AND ALSO REPRESENTATIONS WITH RESPECT TO OTHER ALLEGATIONS OF IMPROPER CONDUCT MADE WITH RESPECT TO THE RESPONDENT AND THE INTERVENER, AND THE PARTIES ALSO HAVING HAD FULL OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO THE CHALLENGES MADE BY THE APPLICANT CONCERNING THE REPORT OF THE EXAMINER, THE BOARD FOUND, FOR REASONS GIVEN ORALLY AT THE HEARING, THAT THE ALLEGATIONS DEALT WITH BY THE BOARD AT THE HEARING WERE WITHOUT SUBSTANCE. THE BOARD FURTHER FOUND, FOR REASONS GIVEN ORALLY AT THE HEARING, THAT PERSONS CLASSIFIED BY THE RESPONDENT AS ASSISTANT FOREMEN, LINE SUPERVISORS AND CLERKS DID NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND WERE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. THE APPLICANT CALLED ONE WITNESS TO TESTIFY CONCERNING THE DISCHARGE OF EDNA MCISAAC WHICH TOOK PLACE OVER THREE MONTHS PRIOR TO THE TIME THE VOTE WAS TAKEN, HOWEVER, TIME PREVENTED THE CALLING OF FURTHER EVIDENCE BY THE APPLICANT AND THE MATTER WAS ADJOURNED FOR CONTINUATION OF HEARING UNTIL FRIDAY, JUNE 21ST, 1968.

7. BY LETTER DATED JUNE 19TH, 1968, THE APPLICANT ADVISED THE BOARD THAT IT DID NOT WISH TO PROCEED WITH THE HEARING SCHEDULED FOR JUNE 21ST AND STATED, IN PART, AS FOLLOWS: "...WE DO NOT FEEL THAT WE CAN PROPERLY SUBMIT FURTHER EVIDENCE IN SUPPORT OF OUR ALLEGATIONS AGAINST THE RESPONDENT AND INTERVENER. NOR DO WE WISH TO MAKE ARGUMENT OR SUBMISSIONS IN RESPECT TO THE ABOVE, UNLESS THE BOARD ORDERS A

CONTINUANCE. WE SHALL ADVISE OUR WITNESSES THAT THEY WILL NOT BE REQUIRED TO APPEAR JUNE 21."

8. IN VIEW OF THE POSITION TAKEN BY THE APPLICANT AND HAVING CONSIDERED THE EVIDENCE WITH RESPECT TO THE DISCHARGE OF MRS. McISAAC, WHICH WAS THE ONLY MATTER TO WHICH THE PARTIES DIRECTED THEIR ATTENTION AT THE HEARING WHICH HAS NOT ALREADY BEEN DEALT WITH BY THE BOARD, WE FIND THAT THE EVIDENCE FAIL TO ESTABLISH ANY IMPROPRIETY ON THE PART OF THE RESPONDENT WITH RESPECT TO THE DISCHARGE OF MRS. McISAAC, AND EVEN IF HER DISCHARGE WAS FOR IMPROPER REASONS, IN VIEW OF THE FACT THAT HER DISCHARGE TOOK PLACE OVER THREE MONTHS PRIOR TO THE TAKING OF THE VOTE IN THIS MATTER, IN THE ABSENCE OF EVIDENCE OF A PATTERN OF IMPROPER CONDUCT ON THE PART OF THE RESPONDENT OR THE INTERVENER, WE FIND THAT HER DISCHARGE WOULD NOT TEND TO AFFECT THE WISHES OF THE EMPLOYEES AS EXPRESSED IN THE REPRESENTATION VOTE, WHICH HAS BEEN CHALLENGED BY THE APPLICANT IN THIS MATTER.

9. BEFORE LEAVING THE MATTER OF THE APPLICANT'S ALLEGATIONS OF IMPROPER CONDUCT ON THE PART OF THE RESPONDENT, INTERVENER, EXAMINER AND RETURNING OFFICER IN THIS CASE, WE FEEL IMPELLED TO STATE THAT ON THE FACTS WHICH THE PARTIES AGREED TO, AND THE EVIDENCE WHICH THE BOARD HEARD, AND HAVING GIVEN FULL CONSIDERATION TO THE REPRESENTATIONS MADE BY THE APPLICANT, WE FIND THAT THE CHARGES MADE BY THE APPLICANT WERE FRIVOLOUS, VEXATIOUS AND COMPLETELY WITHOUT SUBSTANCE.

10. THE BOARD THEREFORE FINDS, IN VIEW OF THE POSITION TAKEN BY THE APPLICANT IN ITS LETTER OF JUNE 19TH, 1968, THAT ALL ITS ALLEGATIONS OF IMPROPER CONDUCT WITH RESPECT TO THE EXAMINATION AND THE REPRESENTATION VOTE IN THIS MATTER ARE DISMISSED.

11. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

12. THE APPLICATION IS THEREFORE DISMISSED.

13. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF

14. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

14032-67-R: INTERNATIONAL LADIES GARMENT WORKERS UNION (APPLICANT) V. RAINEE MANUFACTURING PRODUCTS, LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: ALFRED S. MAGERMAN AND JAMES KITTS FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 25, 1968.

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2. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT SEEKS TO BE CERTIFIED AS BARGAINING AGENT OF ALL EMPLOYEES OF THE RESPONDENT IN ITS FRANCES LINGERIE AND PRINCESS LINGERIE MILLS DIVISION OF THE RESPONDENT IN METROPOLITAN TORONTO.

3. THE RESPONDENT TOOK THE POSITION THAT THE BARGAINING UNIT REQUESTED BY THE APPLICANT IS MERELY A DEPARTMENT OF THE RESPONDENT AND AS SUCH IS INAPPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY ON WHETHER THE EMPLOYEES IN THE LINGERIE DIVISION OF THE RESPONDENT CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED APRIL 5TH, 1968, THIS MATTER WAS LISTED FOR HEARING TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT.

6. THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER ESTABLISHES THAT THE RESPONDENT OPERATES OUT OF A PLANT IN METROPOLITAN TORONTO IN WHICH IT CARRIES ON A MANUFACTURING BUSINESS. AMONG THE PRODUCTS MANUFACTURED BY THE RESPONDENT AT ITS PLANT ARE LADIES' UNDERGARMENTS AND LADIES' HANDBAGS. THE LADIES' UNDERGARMENTS ARE MANUFACTURED OF FINE FABRIC SUCH AS NYLON WHEREAS THE OTHER PRODUCTS MANUFACTURED AND THE HANDBAGS ARE FROM PLASTIC MATERIALS. FORMERLY, THESE PRODUCTS HAD BEEN MANUFACTURED BY SEPARATE COMPANIES, HOWEVER, THE RESPONDENT PURCHASED THE TRADE NAMES OF FRANCES AND PRINCESS LINGERIE AND CURRENTLY MANUFACTURES THE LINGERIE PRODUCTS AND THE HANDBAG PRODUCTS IN A SINGLE PLANT OPERATION. THERE IS NO PARTITION BETWEEN THE LINGERIE AND HANDBAG PORTIONS OF THE PLANT, HOWEVER, STORAGE AREAS IN THE PLANT DO IN FACT DELINEATE THE TWO MANUFACTURING OPERATIONS. THERE IS A COMMON PARKING LOT, ENTRANCE, SHIPPING AND RECEIVING AREA, LUNCH ROOM, WORKING HOURS, HOLIDAYS, FRINGE BENEFITS, AND OFFICE STAFF FOR THE TWO GROUPS OF EMPLOYEES.

7. THE EVIDENCE ALSO ESTABLISHED THAT THE SKILLS OF MANY OF THE EMPLOYEES WERE COMMON TO BOTH GROUPS OF EMPLOYEES. EMPLOYEES FROM ONE GROUP WERE OFTEN TEMPORARILY TRANSFERRED AND INTERMINGLED WITH THE OTHER GROUP.

8. HAVING APPLIED THE CRITERIA ENUNCIATED BY THE BOARD IN THE USARCO CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 526, TO THE FACTS OF THIS CASE, THE BOARD FINDS THAT THE RESPONDENT CARRIES ON AN

INTEGRATED OPERATION AND THEREFORE FINDS THAT ALL THE EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JANUARY 15TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. THE APPLICATION IS THEREFORE DISMISSED.

14235-67-R: INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, AFL, CIO, CLC (APPLICANT) V. AUTOMATIC ELECTRIC (CANADA) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

DECISION OF THE BOARD: JUNE 3, 1968.

1. BY A DECISION DATED MARCH 22ND, 1968, THE BOARD AUTHORIZED W. G. JACKSON, EXAMINER, TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER.

2. BY A LETTER TO THE BOARD DATED MAY 22ND, 1968, COUNSEL FOR THE APPLICANT REGISTERED HIS OBJECTION TO A LINE OF QUESTIONING WHICH COUNSEL FOR THE RESPONDENT WAS ATTEMPTING TO PURSUE WITH EMPLOYEES CALLED AS WITNESSES AT A HEARING CONVENED BY THE EXAMINER. BY LETTER DATED MAY 28TH, 1968, COUNSEL FOR THE RESPONDENT AGREED THAT THE LINE OF QUESTIONING WHICH HE WISHED TO PURSUE WAS ACCURATELY SET OUT IN THE LETTER OF COUNSEL FOR THE APPLICANT. PART OF THAT LETTER READS AS FOLLOWS:

IT HAS BEEN THE CONTENTION OF THE COMPANY THAT EMPLOYEES IN THE FIELD SERVICE DEPARTMENT HAVE A COMMUNITY OF INTEREST WITH EMPLOYEES IN THE EXCHANGE ENGINEERING DEPARTMENT AND OTHER TECHNICAL DEPARTMENTS OF THE COMPANY AND THAT THAT COMMUNITY OF INTEREST REQUIRES THAT BOTH GROUPS SHOULD BE INCLUDED IN THE SAME BARGAINING UNIT.

IN ORDER TO PURSUE THIS LINE, COUNSEL FOR THE COMPANY PROPOSES TO ASK EMPLOYEES OF THE FIELD SERVICE DEPARTMENT WHETHER, APART FROM SPECIAL

ARRANGEMENTS THAT MAY RELATE TO THE FIELD SERVICE DEPARTMENT, THE EMPLOYEES EXPECT THAT THEY WOULD RECEIVE FROM THE COMPANY THE SAME BENEFITS, VACATION ENTITLEMENT, OVERTIME, HOURS OF WORK, ETC. AS ARE ENJOYED BY EMPLOYEES OF THE EXCHANGE ENGINEERING DEPARTMENT.

MORE SPECIFICALLY, COUNSEL FOR THE COMPANY PROPOSED TO ASK EMPLOYEES OF THE FIELD SERVICE DEPARTMENT WHETHER THEY EXPECTED TO RECEIVE THE SAME SALARY AS EMPLOYEES IN EXCHANGE ENGINEERING.

3. COUNSEL FOR THE APPLICANT SUBMITS IN HIS LETTER THAT TO QUESTION AN EMPLOYEE AS TO WHETHER HE EXPECTS TO BE TREATED IN THE SAME WAY AS ANOTHER EMPLOYEE IN A DIFFERENT DEPARTMENT IS NOT A PROPER QUESTION. COUNSEL ARGUES THAT "COMMUNITY OF INTEREST" IS A MATTER OF FACT, NOT A MATTER OF EXPECTATION OR WISHFUL THINKING AND IT CANNOT BE THAT A POLL OF EMPLOYEES SUCH AS IS CONTEMPLATED BY THE QUESTIONS POSED BY COUNSEL FOR THE RESPONDENT WILL BE AT ALL HELPFUL TO THE BOARD IN DETERMINING THE QUESTION IN ISSUE.

4. COUNSEL FOR THE RESPONDENT IN HIS LETTER SUBMITS THAT THE BEST EVIDENCE OF THE EXISTENCE OF A COMMUNITY OF INTEREST BETWEEN TWO GROUPS OF A KIND THAT IS RELEVANT TO THE QUESTION OF THE APPROPRIATENESS OF A BARGAINING UNIT WOULD BE EVIDENCE THAT THE MEMBERS OF ONE OF THE GROUPS EXPECT TO BE TREATED BY THEIR EMPLOYER IN THE SAME MANNER, AS FAR AS WAGES AND BENEFITS ARE CONCERNED, AS THE MEMBERS OF THE OTHER GROUP. COUNSEL ARGUES THAT WHILE IT IS USUAL TO INFER THE EXISTENCE OF A "COMMUNITY OF INTEREST" FROM OBJECTIVE EVIDENCE OF CHARACTERISTICS OR INTERESTS COMMON TO BOTH GROUPS, DIRECT EVIDENCE FROM MEMBERS OF A GROUP AS TO WHAT THEIR EXPECTATIONS ARE IN THESE MATTERS MUST BE EQUALLY RELEVANT.

5. IN DETERMINING THE APPROPRIATE COLLECTIVE BARGAINING UNIT THE BOARD ONLY CONSIDERS EVIDENCE RELATING TO AN EMPLOYEE OR GROUP OF EMPLOYEES AS OF THE DATE OF THE MAKING OF THE APPLICATION. SPECULATIVE OPINIONS BY EMPLOYEES AS TO WHAT MAY OCCUR IN THE FUTURE HAVE NO EVIDENTIARY VALUE AND CAN IN NO WAY ASSIST THE BOARD.

6. HAVING REGARD TO THE WHOLLY SPECULATIVE CHARACTER OF THE LINE OF QUESTIONING WHICH COUNSEL FOR THE RESPONDENT IS SEEKING TO PURSUE, IT IS OUR RULING THAT HE NOT BE PERMITTED TO ASK SUCH QUESTIONS OF EMPLOYEES CALLED AS WITNESSES AT THE HEARINGS BEING CONDUCTED BY THE EXAMINER APPOINTED IN THIS MATTER.

14277-67-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. INTERNATIONAL HARVESTER COMPANY OF CANADA, LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. MALONEY FOR THE APPLICANT,
J. P. SANDERSON, S. FREEMAN AND K. CALDWELL FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 27, 1968.

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2. THE BOARD HAS CONSIDERED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 6TH, 1968 AND THE REPRESENTATIONS OF THE PARTIES.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE EMPLOYEES OF THE RESPONDENT AT ITS SALES AND SERVICE STORE AT CHATHAM, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, AND SALESMEN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT RALPH RUBY WHO IS CLASSIFIED AS STORE ACCOUNTANT EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT BARBARA TAYLOR WHO IS CLASSIFIED AS A STENOGRAPHER DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND THEREFORE IS INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD IN THE PAST HAS FOUND COUNTER MEN AND PARTS HELPERS TO BE APPROPRIATE FOR INCLUSION IN BOTH SHOP AND OFFICE UNITS IN OPERATIONS OF A SIMILAR TYPE TO THAT CARRIED ON BY THE RESPONDENT. IN ALL THE CIRCUMSTANCES OF THE INSTANT CASE THE BOARD FINDS THAT EMPLOYEES CLASSIFIED AS COUNTER MEN AND PARTS HELPERS ARE APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 18TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14447-68-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. COCA-COLA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: DAVID A. WAGNER FOR THE APPLICANT, T. D. DELAMERE, Q.C., FOR THE RESPONDENT, NORMAN L. MATHEWS, Q.C., JOHN ROWLANDS LEVELY, KEITH J. M. STEWART, HUGH MORRISON, W. I. C. BINNIE, BOB McNAB, WALTER HALL AND JOHN VAN ROON FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 26, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.

2. THE RESPONDENT OPERATES A SOFT DRINK BOTTLING PLANT AT TWO LOCATIONS IN METROPOLITAN TORONTO. ONE PLANT, WHICH EMPLOYED APPROXIMATELY 110 EMPLOYEES, IS LOCATED ON TURNBERRY AVENUE IN THE WESTON AREA, THE OTHER IS LOCATED ON OVERLEA BOULEVARD IN LEASIDE AND EMPLOYED APPROXIMATELY 190 EMPLOYEES. EACH PLANT IS A SELF-CONTAINED BOTTLING OPERATION HAVING ITS OWN DRIVER SALESMEN.

3. AT THE PRE-HEARING VOTE MEETING, THE APPLICANT AND THE RESPONDENT AGREED TO A BARGAINING UNIT IN THE FOLLOWING TERMS:

ALL EMPLOYEES OF COCA-COLA LTD., AT METROPOLITAN TORONTO SAVE AND EXCEPT OFFICE STAFF, CHEMISTS AND LABORATORY TECHNICIANS EMPLOYED IN THE QUALITY CONTROL DEPARTMENT, SPECIAL SALESMEN, FOREMAN AND PERSONS ABOVE THE RANK OF SPECIAL SALESMAN OR FOREMAN.

4. THE BOARD DIRECTED THE TAKING OF A PRE-HEARING REPRESENTATION VOTE IN A VOTING CONSTITUENCY DESCRIBED IN THE SAME TERMS AS THE BARGAINING UNIT WHICH THE APPLICANT AND THE RESPONDENT HAD AGREED TO.

5. AT THE TIME THE APPLICATION WAS MADE, THE APPLICANT HAD AS MEMBERS EMPLOYEES IN EACH PLANT AND ALSO ENJOYED MEMBERSHIP AMONG THE DRIVER SALESMEN AND SALESMEN'S HELPERS AT EACH PLANT.

6. FOLLOWING THE BOARD'S DECISION DIRECTING THE VOTE, NOTICE OF TAKING OF VOTE (FORM 42) WAS POSTED AT BOTH PLANTS. THIS NOTICE ADVISED THE EMPLOYEES, AMONG OTHER THINGS, OF THE DESCRIPTION OF THE VOTING CONSTITUENCY AND THE FACT THAT VOTING WOULD TAKE PLACE IN THAT VOTING CONSTITUENCY AT EACH PLANT. NO OBJECTION WAS MADE TO THE BOARD'S DECISION DIRECTING THE VOTE AND NO REQUEST WAS MADE TO THE BOARD THAT IT REVIEW ITS DECISION.

7. ON THE TAKING OF THE REPRESENTATION VOTE, THERE WERE 299 NAMES ON THE REVISED VOTERS' LIST OF WHOM 294 CAST BALLOTS. OF THE BALLOTS CAST, 162 OF THE BALLOTS WERE MARKED IN FAVOUR OF THE APPLICANT, 129 WERE MARKED AGAINST THE APPLICANT AND THERE WERE 3 SPOILED BALLOTS.

8. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE, SOME 72 EMPLOYEES AT THE TURNBERRY PLANT SIGNED A DOCUMENT WHEREIN THEY INDICATED THAT THEY DID NOT WISH TO BE REPRESENTED BY THE APPLICANT AND INCLUDED IN A BARGAINING UNIT WITH THE EMPLOYEES AT THE OVERLEA PLANT.

9. IN ADDITION, SOME OF THE DRIVER SALES STAFF AT THE OVERLEA PLANT RETAINED COUNSEL TO MAKE REPRESENTATIONS TO THE BOARD ON THE DESCRIPTION OF THE BARGAINING UNIT. COUNSEL FOR THE OVERLEA DRIVER SALESMEN ADVISED THE BOARD THAT HE WAS AUTHORIZED TO SPEAK ON BEHALF OF ABOUT 32 OF THE DRIVER SALESMEN AT THE OVERLEA PLANT. APPARENTLY, THERE WERE A TOTAL OF ABOUT 90 DRIVER SALESMEN AND HELPERS AT THE OVERLEA PLANT AT THE TIME THE APPLICATION WAS MADE.

10. THE PARTIES, HAVING AGREED ON THE RELEVANT FACTS RELATING TO THE OPERATIONS OF THE TWO PLANTS AND THE FACTS RELATING TO THE DUTIES AND RESPONSIBILITIES OF THE DRIVER SALESMEN, AND THE APPLICANT HAVING AGREED THAT THE OBJECTING EMPLOYEES HAD THE RIGHT TO MAKE REPRESENTATIONS WITH RESPECT TO THE DESCRIPTION OF THE APPROPRIATE BARGAINING UNIT AT THIS TIME, THE BOARD HEARD THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT.

11. COUNSEL FOR BOTH GROUPS OF OBJECTORS ARGUED THAT BECAUSE THE TWO PLANTS WERE PHYSICALLY SEPARATE AND INDEPENDENT OPERATIONS, EFFECT SHOULD BE GIVEN TO THE WILL OF THE MAJORITY OF THE EMPLOYEES AT THE TURNBERRY PLANT AND THE BOARD SHOULD THEREFORE NOT INCLUDE THOSE EMPLOYEES IN A BARGAINING UNIT WITH THE EMPLOYEES AT THE OVERLEA PLANT. ON BEHALF OF THE OBJECTING DRIVER SALESMEN, IT WAS ARGUED THAT BECAUSE OF THE NATURE OF THEIR WORK AND THE FACT THAT THEY WERE PAID A COMMISSION IN ADDITION TO THEIR BASE RATE OF PAY, WHICH PLACED THEIR EARNINGS UP TO \$6,000, MORE THAN PRODUCTION EMPLOYEES IN THE BOTTLING PLANT, THEY DID NOT SHARE A COMMUNITY OF INTEREST WITH THE PRODUCTION EMPLOYEES.

12. THE APPLICANT REFERRED THE BOARD TO A GREAT MANY DECISIONS OF THE BOARD WHICH ESTABLISHED CONCLUSIVELY THAT BOTH THE RESPONDENT AND THE SOFT DRINK BOTTLING INDUSTRY, AS A WHOLE, HAD ESTABLISHED A REGULAR PRACTICE OF BARGAINING ON BEHALF OF BOTH INSIDE AND OUTSIDE EMPLOYEES IN ONE BARGAINING UNIT. IT WAS ALSO ESTABLISHED THAT IN THE ONLY OTHER TWO PLANT BOTTLING OPERATIONS IN ONTARIO, THE BOARD HAD INCLUDED BOTH PLANTS IN ONE BARGAINING UNIT OVER THE OBJECTIONS OF ONE OF THE PARTIES.

13. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT IT IS THE UNIFORM PRACTICE OF THE RESPONDENT, IN LOCALITIES IN ONTARIO WHERE A BARGAINING UNIT HAS BEEN ESTABLISHED, TO HAVE THE DRIVER SALESMEN INCLUDED IN THE BARGAINING UNIT WITH

THE INSIDE PRODUCTION EMPLOYEES. THIS PRACTICE IS ALSO IN ACCORD WITH THE REGULAR PRACTICE THROUGHOUT THE SOFT DRINK BOTTLING INDUSTRY.

14. WHEN THE CRITERIA ENUNCIATED BY THE BOARD IN THE USARCO CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 526, ARE APPLIED TO THE FACTS OF THIS CASE, WE FIND THAT MANY OF THE FACTORS ARE PRESENT WHICH THE BOARD TAKES INTO CONSIDERATION IN DETERMINING APPROPRIATE BARGAINING UNITS IN MULTI-PLANT OPERATIONS AND THESE FACTORS INDICATE THAT IT WOULD BE APPROPRIATE TO INCLUDE BOTH PLANTS IN ONE BARGAINING UNIT IN THE CIRCUMSTANCES OF THIS CASE. WHILE THE WISHES OF THE EMPLOYEES CONCERNED ARE ONE OF THE FACTORS TO BE TAKEN INTO CONSIDERATION, SUCH WISHES ARE NOT THE EXCLUSIVE CONTROLLING FACTOR. THE WISHES OF THE EMPLOYEES AS TO WHETHER OR NOT THERE SHOULD BE ONE OR TWO BARGAINING UNITS CAN NO MORE DETERMINE THE APPROPRIATENESS OF THE BARGAINING UNIT THAN THE EXTENT OF ORGANIZATION ON THE PART OF AN APPLICANT UNION CAN BE THE DETERMINING FACTOR.

15. EVEN IF WE WERE TO IGNORE THE WISHES OF THE COMBINED MAJORITY AS EXPRESSED IN THE REPRESENTATION VOTE IN THIS CASE, THE FACT REMAINS THAT THE MAJORITY OF EMPLOYEES AT BOTH PLANTS AUTHORIZED THE APPLICANT TO MAKE THIS APPLICATION AND THIS AUTHORITY MUST NECESSARILY EXTEND TO AUTHORIZE A UNION TO PROPOSE AN APPROPRIATE BARGAINING UNIT.

16. A FACTOR OF IMPORTANCE EQUAL TO THE WILL OF THE EMPLOYEES, WHEN CONSIDERING WHETHER THERE SHOULD BE A SEPARATE BARGAINING UNIT AT EACH PLANT, IS THE WISHES OF THE EMPLOYER. THE EMPLOYER HAS AN ECONOMIC INTEREST IN WHETHER HE MUST CONDUCT ONE OR TWO SETS OF NEGOTIATIONS FOR A COLLECTIVE AGREEMENT.

17. WHERE, AS IN THE INSTANT CASE, THE APPLICANT AND THE RESPONDENT HAVE AGREED TO THE DESCRIPTION OF THE BARGAINING UNIT AND THE UNIT WHICH HAS BEEN AGREED TO IS IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE IN DESCRIBING BARGAINING UNITS AND IS CONSISTENT WITH THE BARGAINING HISTORY OF THE EMPLOYER AND OF THE INDUSTRY AS A WHOLE, THESE FACTORS OUTWEIGH THE WISHES OF THE EMPLOYEES WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT.

18. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

19. HAVING REGARD TO THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT AND HAVING CONSIDERED THE FACTORS ABOVE REFERRED TO, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT OFFICE STAFF, SPECIAL SALESMEN, FOREMEN, PERSONS ABOVE THE RANKS OF SPECIAL SALESMAN AND FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

20. THE BOARD FURTHER NOTES THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT THAT CHEMISTS AND LABORATORY TECHNICIANS EMPLOYED IN THE QUALITY CONTROL DEPARTMENT ARE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT.

21. THE BOARD IS SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

22. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

23. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

24. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

14462-68-R: HOTEL AND RESTAURANT EMPLOYEE'S AND BARTENDERS' INTERNATIONAL UNION, LOCAL 756 A.F.L., C.I.O., C.L.C., IN ST. CATHARINES, ONTARIO (APPLICANT) V. ANCHORAGE MOTOR HOTEL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: RICHARD G. RYDER FOR THE APPLICANT PETER OPEKAN FOR THE RESPONDENT, SHIRLEY MAY WAINES, MRS. MOLLY CLARK AND MARGARET MARKS FOR THE OBJECTORS.

DECISION OF THE BOARD: JUNE 20, 1968.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MAY 28TH, 1968, IN THIS MATTER.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA-ON-THE-LAKE, SAVE AND EXCEPT OWNERS, MANAGERS AND PERSONS ABOVE THE RANKS OF OWNER AND MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD DETERMINES THAT SHIRLEY WAINES DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD FURTHER FINDS THAT DONALD READ AND MARJORIE BILIKI WERE NOT EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE THE APPLICATION WAS MADE.

6. THE BOARD FURTHER FINDS THAT ON THE DATE THE APPLICATION WAS MADE, THE RESPONDENT EMPLOYED SIX PERSONS IN THE BARGAINING UNIT OF WHOM THE APPLICANT CLAIMED TWO AS MEMBERS.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 25TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. THE APPLICATION IS THEREFORE DISMISSED.

9. EVEN IF THE BOARD HAD FOUND THAT MARJORIE BILIKI WAS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT ON THE GROUNDS THAT SHE HAD BEEN IMPROPERLY LAID OFF PRIOR TO THE DATE THE APPLICATION WAS MADE RATHER THAN BEING DISCHARGED, THE APPLICANT WOULD HAVE THREE MEMBERS OUT OF A TOTAL BARGAINING UNIT OF SEVEN EMPLOYEES AND THE RESULT OF THIS APPLICATION WOULD NOT BE CHANGED.

14519-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. JIM DAVIDSON MOTORS LTD. (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: W.W. TILLER FOR THE APPLICANT, BRUCE PALMER Q.C., FOR A GROUP OF EMPLOYEES AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 5, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SALES MANAGERS, PERSONS ABOVE THE RANK OF SALES MANAGER AND OFFICE STAFF,

CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. AT THE HEARING IN THIS MATTER, MR. PALMER ADVISED THE BOARD THAT HE ACTED ON BEHALF OF FOUR EMPLOYEES IN THE BARGAINING UNIT WHO DESIRED TO OPPOSE THE APPLICATION. THERE WAS, HOWEVER, NO WRITTEN EVIDENCE OF OPPOSITION TO THE APPLICATION FILED WITH THE BOARD AS OF THE TERMINAL DATE OF THE APPLICATION. MR. PALMER, BY LETTER TO THE REGISTRAR OF THE BOARD DATED MAY 1ST, 1968, STATED THAT HE WAS IN POSSESSION OF THE DOCUMENTS SENT BY THE REGISTRAR OF THE BOARD TO THE RESPONDENT ON APRIL 29TH, 1968 INCLUDED IN WHICH WAS FORM 5 (NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING). THE NOTICE TO EMPLOYEES IN FORM 5 CLEARLY INDICATED THE TERMINAL DATE FIXED FOR THIS APPLICATION AND SETS OUT IN PART AS FOLLOWS:

2. YOUR ATTENTION IS DIRECTED TO THE FOLLOWING INFORMATION CONTAINED IN THE APPLICATION:

3. THE HEARING OF THE APPLICATION BY THE BOARD WILL TAKE PLACE AT ITS BOARD ROOM, 8 YORK STREET, TORONTO 1, ONTARIO, ON TUESDAY, THE 28TH DAY OF MAY, 1968, AT 9:15 O'CLOCK IN THE FORENOON. (E.D

4. THE TERMINAL DATE FIXED FOR THIS APPLICATION AS DIRECTED BY THE BOARD IS THE 6TH DAY OF MAY, 1968.

5. ANY EMPLOYEE OR GROUP OF EMPLOYEES AFFECTED BY THE APPLICATION AND DESIRING TO MAKE REPRESENTATIONS TO THE BOARD IN OPPOSITION TO THIS APPLICATION MUST SEND TO THE BOARD A STATEMENT IN WRITING OF SUCH DESIRE, WHICH SHALL,

(A) CONTAIN THE RETURN MAILING ADDRESS OF EMPLOYEE OR REPRESENTATIVE OF A GROUP OF EMPLOYEES;

(B) CONTAIN THE NAME OF THE EMPLOYER CONCERNED:
AND

(C) BE SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES.

6. THE STATEMENT OF DESIRE MUST BE,

(A) RECEIVED BY THE BOARD NOT LATER THAN THE TERMINAL DATE SHOWN IN PARAGRAPH 4; OR

(B) IF IT IS MAILED BY REGISTERED MAIL ADDRESSED TO THE BOARD AT ITS OFFICE, 8 YORK STREET, TORONTO 1, ONTARIO, MAILED NOT LATER THAN THE TERMINAL DATE SHOWN IN PARAGRAPH 4.

7. A STATEMENT OF DESIRE THAT DOES NOT COMPLY WITH PARAGRAPHS 5 AND 6 WILL NOT BE ACCEPTED BY THE BOARD.

8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.

9. NO ORAL EVIDENCE OF MEMBERSHIP IN A TRADE UNION, OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF THE APPLICANT WILL BE ACCEPTED BY THE BOARD EXCEPT TO IDENTIFY AND SUBSTANTIATE SUCH WRITTEN EVIDENCE.

FURTHER, THE RELEVANT PORTIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE READ AS FOLLOWS:

48.-(1) EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL NOT BE ACCEPTED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION OR FOR A DECLARATION TERMINATING BARGAINING RIGHTS UNLESS THE EVIDENCE IS IN WRITING; SIGNED BY THE EMPLOYEE OR EACH MEMBER OF A GROUP OF EMPLOYEES, AS THE CASE MAY BE, AND,

(A) IS ACCOMPANIED BY,

(i) THE RETURN MAILING ADDRESS OF THE PERSON WHO FILES THE EVIDENCE, OBJECTION OR SIGNIFICATION, AND

(ii) THE NAME OF THE EMPLOYER; AND

(B) IS FILED NOT LATER THAN THE TERMINAL DATE FOR THE APPLICATION.

(2) NO ORAL EVIDENCE OF MEMBERSHIP IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OF A TRADE UNION OR OF SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION SHALL BE ACCEPTED BY THE BOARD EXCEPT TO IDENTIFY AND SUBSTANTIATE THE WRITTEN EVIDENCE REFERRED TO IN SUBSECTION 1.

5. IT IS NOTED THAT THE PROVISIONS OF SECTION 48 ARE MANDATORY AND IT IS QUITE CLEAR THAT SUCH PROVISIONS WERE NOT SATISFIED IN THIS CASE. THE BOARD REQUIRES WRITTEN EVIDENCE OF OPPOSITION TO AN APPLICATION INCLUDING THEREON SIGNATURES OF EMPLOYEES, WHICH SIGNATURES THE BOARD CHECKS WITH THE SPECIMEN SIGNATURES OF EMPLOYEES SUBMITTED BY THE EMPLOYER AS IT DOES WITH RESPECT TO MEMBERSHIP EVIDENCE SUBMITTED BY THE UNION. THE PROCEDURE AND REQUIREMENTS CONCERNING EVIDENCE OF OPPOSITION TO AN APPLICATION FOR CERTIFICATION HAVE BEEN DEALT WITH IN MANY PREVIOUS CASES BY THE BOARD INCLUDING AND FOR REFERENCE SEE ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, O.L. R.B. MONTHLY REPORT, MARCH 1968 P. 1183 AND SOO DAIRIES LIMITED CASE, BOARD FILE No. 13853-67-R.

6. AT THE HEARING THE BOARD ADVISED MR. PALMER THAT AS HE REPRESENTED EMPLOYEES IN THE BARGAINING UNIT HE COULD MAKE REPRESENTATIONS TO THE BOARD WITH RESPECT TO THE COMPOSITION OF THE BARGAINING UNIT OR ANY OTHER MATTER PROPERLY BEFORE IT. HOWEVER, THE BOARD COULD NOT DEAL AT THAT TIME IN ANY WAY WITH EMPLOYEES' OPPOSITION TO THE APPLICATION. MR. PALMER DECLINED TO MAKE ANY SUCH REPRESENTATIONS BUT REQUESTED AN ADJOURNMENT OF THE HEARING TO PERMIT THE LATE FILING OF DOCUMENTS IN OPPOSITION TO THE APPLICATION.

7. FOR THE REASONS SET OUT ABOVE AND THOSE SET OUT IN THE CASES REFERRED TO, THE BOARD IS OF THE OPINION THAT IT SHOULD NOT DEPART FROM ITS USUAL PRACTICE IN THIS MATTER AND ACCORDINGLY DENIES MR. PALMER'S REQUEST FOR AN ADJOURNMENT AND EXTENSION OF THE TERMINAL DATE TO PERMIT LATE FILING OF DOCUMENTS IN OPPOSITION TO THE APPLICATION.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 6TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14558-68-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. NORTH YORK GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER #1) V. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #2).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
D. B. ARCHER AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: JEAN JACQUES BLAIS AND WILLIAM EDWARD RANCROFT FOR THE APPLICANT, GEORGE S. P. FERGUSON, R. R. WOOD AND S. POLLOCK FOR THE RESPONDENT, J. SULLIVAN FOR INTERVENER NO. 1, AND NO ONE FOR INTERVENER NO. 2.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER
J. E. C. ROBINSON: JUNE 10, 1968.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, UNDERGRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, CHIEF ENGINEER, STATIONARY ENGINEERS COVERED BY A SUBSISTING CERTIFICATE OF THE ONTARIO LABOUR RELATIONS BOARD OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT SPECIMEN COLLECTION TECHNICIANS, MORGUE TECHNICIANS, AND STUDENTS TAKING A FORMAL COURSE WHICH LEADS TO THEIR CERTIFICATION AS REGISTERED TECHNICIAN ARE NOT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT WARD CLERKS, CASHIERS, SWITCHBOARD OPERATORS, AND SPECIAL DIET CLERKS ARE INCLUDED IN THE TERM "OFFICE STAFF", AND THAT THE HEAD CHEF IS EXCLUDED FROM THE BARGAINING UNIT AS BEING A SUPERVISOR OR FOREMAN.

6. THE RESPONDENT IN THIS APPLICATION FOR CERTIFICATION SUBMITTED THAT THE APPLICATION IS PREMATURE AND THAT FINAL DETERMINATION OF THE MATTER SHOULD BE POSTPONED UNTIL SUCH TIME AS A REPRESENTATIVE NUMBER OF EMPLOYEES WERE PRESENT. ITS SUBMISSION IS THAT A PLANNED BUILD-UP OF EMPLOYEES IS IN PROCESS AND A REPRESENTATIVE NUMBER OF EMPLOYEES HAS NOT YET BEEN HIRED. THE HOSPITAL HAD NOT OPENED AT THE TIME THE

APPLICATION WAS FILED, AND SOME THIRTY-SIX PEOPLE HAVE BEEN ADDED TO THE BARGAINING UNIT SINCE THE DATE OF APPLICATION. A FURTHER STEADY INCREASE IN THE COMPLEMENT IS PLANNED AS THE HOSPITAL PROGRESSES TO FULL PATIENT CAPACITY. THE EXPECTED RATE OF INCREASE IS TWENTY-TO-TWENTY-FIVE NEW EMPLOYEES PER MONTH TO A TOTAL OF APPROXIMATELY FIVE HUNDRED. THERE WERE AT THE DATE OF THE HEARING (AS DISTINCT FROM THE DATE OF APPLICATION) SOME ONE HUNDRED AND SIXTY-EIGHT PEOPLE IN THE UNIT.

7. COUNSEL FOR THE APPLICANT OPPOSED THE SUBMISSION ON THE GROUNDS THAT ALL THE PROPOSED CLASSIFICATIONS IN THE BARGAINING UNIT WERE OCCUPIED SO AS TO ENABLE BARGAINING TO TAKE PLACE WITH RESPECT THEREIN. HE ALSO SUBMITTED THAT THE BOARD'S JURISDICTION DID NOT PERMIT THE PROCEDURE PROPOSED BY THE RESPONDENT. AS TO THESE MATTERS, SEE THE BOCH-SIMPSON LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH, 1967, P. 967, AND THE ERNIE FRANT AND PETER WASELOVICH CASE, 57 CLLC ¶18,057 REFERRED TO THEREIN.

8. HAVING REGARD TO THE PRINCIPLES REFERRED TO IN THE CASES CITED ABOVE AND TO THE EVIDENCE BEFORE US, THE BOARD IS SATISFIED THAT THE RESPONDENT HAS A PLANNED PROGRAMME FOR THE INCREASE IN ITS WORK FORCE WITHIN A SPECIFIED PERIOD. IN ACCORDANCE WITH ITS CUSTOMARY PRACTICE THE BOARD DIRECTS THE RESPONDENT TO REPORT TO THE BOARD, UNLESS OTHERWISE DIRECTED, THE NUMBER OF PERSONS EMPLOYED IN THE BARGAINING UNIT ON THE FOLLOWING DATES: JUNE 15TH AND JUNE 30TH, 1968; JULY 15TH AND JULY 31ST, 1968; AUGUST 15TH AND AUGUST 31ST, 1968.

9. IF THE BUILD-UP DOES NOT PROGRESS AS ALLEGED BY THE RESPONDENT, THE BOARD WILL CONSIDER THE MEMBERSHIP POSITION OF THE APPLICANT AS OF THE DATE THIS APPLICATION WAS MADE.

DECISION OF BOARD MEMBER D. B. ARCHER: JUNE 10, 1968.

1. I DISSENT. ALL CLASSIFICATIONS IN THE BARGAINING UNIT ARE OCCUPIED SO THAT ORDERLY COLLECTIVE BARGAINING COULD PROCEED IMMEDIATELY. I WOULD HAVE ORDERED AN IMMEDIATE VOTE.

14560-68-R: READY-MIX, BUILDING SUPPLY, HYDRO & CONSTRUCTION DRIVERS, WAREHOUSEMEN & HELPERS LOCAL 230 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. MILLWORK AND BUILDING SUPPLIES COMPANY LIMITED (RESPONDENT)

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: I. J. THOMSON AND R. WEDGE FOR THE APPLICANT, W. G. PHELPS AND E. A. LUPTON FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 9, 1968.

2. THE APPLICANT APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON MAY 14TH, 1968. THE EARLIEST DATE APPEARING ON THE APPLICATIONS FOR MEMBERSHIP FILED BY THE APPLICANT IS MAY 3RD, 1968 AND RALPH WEDGE, AN OFFICIAL OF THE APPLICANT, SIGNED ALL THE MEMBERSHIP EVIDENCE AS COLLECTOR OF THE INITIATION FEE.

3. THE RESPONDENT CHARGED THAT ONE OF ITS FOREMEN ASSISTED THE APPLICANT IN ITS ORGANIZING CAMPAIGN AND ARGUED THAT THE APPLICATION SHOULD THEREFORE BE DISMISSED ON THE GROUNDS THAT THE APPLICANT RECEIVED SUPPORT FROM THE FOREMAN CONTRARY TO SECTIONS 10 AND 48 OF THE ACT. THE RESPONDENT ALSO ARGUED THAT THE FOREMAN'S ACTIVITY, OR HIS POSITION AS A MEMBER OF MANAGEMENT, MUST BE DEEMED TO HAVE INTIMIDATED OR COERCED THE EMPLOYEES INTO JOINING THE APPLICANT CONTRARY TO SECTIONS 52 AND 53 OF THE ACT.

4. THE RESPONDENT ADDUCED EVIDENCE THAT MR. DOUGHTY, ONE OF ITS FOREMEN, HAD CANVASSED THE EMPLOYEES DURING WORKING HOURS APPROXIMATELY ONE MONTH PRIOR TO THE TIME THAT THE APPLICANT'S EVIDENCE OF MEMBERSHIP WAS SIGNED. MR. DOUGHTY ASKED THE EMPLOYEES TO SIGN THEIR NAME ON A PAPER TO INDICATE THAT THEY WANTED A UNION. MR. DOUGHTY DID NOT MENTION THE NAME OF ANY PARTICULAR UNION. APPARENTLY SOME TWELVE OR FIFTEEN EMPLOYEES SIGNED THE PAPER AT MR. DOUGHTY'S REQUEST. WHILE SOME EMPLOYEES REFUSED TO SIGN, THEY WERE NOT REQUESTED TO SIGN A SECOND TIME NOR WERE THEY HARASSED IN ANY WAY BY MR. DOUGHTY.

5. ONE OF THE RESPONDENT'S WITNESSES TESTIFIED THAT HE HAD SIGNED THE PAPER AT MR. DOUGHTY'S REQUEST SOME TIME DURING THE MONTH OF MARCH, 1968. HOWEVER, AFTER THE APPLICANT HAD APPLIED FOR CERTIFICATION, MR. DOUGHTY ACCUSED THE WITNESS OF BEING THE PERSON WHO HAD BROUGHT THE APPLICANT UNION INTO THE PLANT. THE WITNESS WAS OBVIOUSLY DISTURBED ABOUT THE ACCUSATION, ESPECIALLY SINCE MR. DOUGHTY HAD ATTEMPTED TO GET A UNION INTO THE PLANT ON AN EARLIER OCCASION. THE WITNESS EMPHATICALLY DENIED THAT HE HAD ANY KNOWLEDGE OF THE IDENTITY OF THE PERSON WHO HAD INSTIGATED THE APPLICANT'S ORGANIZING CAMPAIGN.

6. ALL OF THE RESPONDENT'S WITNESSES TESTIFIED THAT MR. WEDGE WAS ALONE WHEN HE APPROACHED THEM TO SIGN AN APPLICATION FOR MEMBERSHIP CARD. NO MENTION WAS MADE BY MR. WEDGE TO THE RESPONDENT'S WITNESSES CONCERNING THEIR SIGNING A LIST FOR MR. DOUGHTY.

7. MR. WEDGE TESTIFIED ON BEHALF OF THE APPLICANT THAT THE APPLICANT UNION HAD DIRECTED HIM TO ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES WHEN THE UNION WAS ADVISED BY A TEAMSTER UNION STEWARD, WHO WORKED FOR ANOTHER COMPANY IN OSHAWA, THAT THE RESPONDENT'S EMPLOYEES WISHED UNION REPRESENTATION. MR. WEDGE FURTHER TESTIFIED THAT HE HAD NO KNOWLEDGE OF MR. DOUGHTY AND HAD NOT RECEIVED ANY ASSISTANCE FROM HIM. HE STATED THAT ALL THE MEMBERSHIP CARDS WERE SIGNED IN HIS PRESENCE, AWAY FROM THE COMPANY PROPERTY, AND WITHOUT THE ASSISTANCE OF MR. DOUGHTY.

8. THE RESPONDENT ARGUED THAT THE BOARD SHOULD APPLY THE SAME CRITERION WHEN ASSESSING SUPPORT OF A UNION'S ORGANIZING CAMPAIGN BY A MEMBER OF MANAGEMENT (WHOM WE SHALL HEREINAFTER REFER TO AS A FOREMAN), AS THAT WHICH THE BOARD APPLIES IN ASSESSING EVIDENCE OF THE SUPPORT OF A FOREMAN FOR A PETITION IN OPPOSITION TO A UNION'S APPLICATION FOR CERTIFICATION.

9. THE BOARD MUST ASSESS EVIDENCE OF A FOREMAN'S SUPPORT TO DETERMINE WHETHER THE ACTIVITIES OF THE FOREMAN WOULD LIKELY TEND TO DEPRIVE THE EMPLOYEES OF THEIR FREEDOM OF CHOICE, EITHER BECAUSE THE ACTIVITIES WERE COERCIVE OR BECAUSE THE POSITION OF THE FOREMAN WOULD UNDULY INFLUENCE THE EMPLOYEES. ACCORDINGLY, THE BOARD TREATS THE EVIDENCE OF SUPPORT, WHETHER IN FAVOUR OF THE UNION OR IN OPPOSITION TO THE UNION, IN THE SAME MANNER. THE MOST IMPORTANT ELEMENT TO CONSIDER IS WHETHER THE EVIDENCE OF SUPPORT WOULD LIKELY TEND TO DEPRIVE THE EMPLOYEES OF, OR UNDULY INFLUENCE THE EMPLOYEES WITH RESPECT TO, THEIR FREEDOM OF CHOICE. IN MAKING SUCH A DETERMINATION, THE BOARD MUST ASCERTAIN WHETHER THE ACTIVITIES OF THE FOREMAN WERE, IN FACT, IN ACCORDANCE WITH THE RECOGNIZED INTERESTS OR WISHES OF MANAGEMENT OR WOULD APPEAR TO BE CONSISTENT WITH THE POSITION OF THE EMPLOYER WITH RESPECT TO THE UNION.

10. THERE IS USUALLY ONE OF OUR BASIC FACT SITUATIONS PRESENT WHEN THE BOARD IS CALLED UPON TO MAKE SUCH A DETERMINATION. WHILE THE EVIDENCE IN A PARTICULAR CASE MAY ESTABLISH THE CONTRARY, THE ACTIVITIES OF THE FOREMAN WITH RESPECT TO THE INTEREST AND POSITION OF THE EMPLOYER ARE USUALLY READILY RECOGNIZABLE BY THE EMPLOYEES CONCERNED.

11. ONE FACT SITUATION WHICH THE BOARD HAS DEALT WITH FREQUENTLY IS THE CASE WHERE A UNION HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT AND A GROUP OF EMPLOYEES SIGN A DOCUMENT IN OPPOSITION TO THE APPLICATION UNDER CONDITIONS WHERE A FOREMAN HAS SUPPORTED THE ORIGINATION AND CIRCULATION OF SUCH DOCUMENT. THE FOREMAN'S ACTIVITIES IN OPPOSITION TO THE APPLICATION OF THE UNION ARE ALMOST INVARIABLY RECOGNIZED BY THE EMPLOYEES TO BE IN ACCORD WITH THE INTERESTS OF MANAGEMENT. THE FOREMAN'S ACTIVITIES WOULD LIKELY DEFEAT THE PURPOSE OF A PETITION IN SUCH A CASE (SEE PIGOTT MOTORS (1961) LIMITED CASE, 63 C.L.L.C. ¶16,264). A POSSIBLE EXCEPTION TO THIS GENERAL RULE MIGHT BE THE CASE WHERE THE COMPANY WAS KNOWN TO BE ATTEMPTING TO MAKE A "SWEETHEART" DEAL WITH A PARTICULAR UNION AND A FOREMAN, WHO FELT THAT SUCH A DEAL WOULD NOT SERVE THE BEST INTERESTS OF THE EMPLOYEES, TOOK IT UPON HIMSELF TO ENCOURAGE A PETITION AGAINST THE UNION. IF THE EVIDENCE ESTABLISHED THAT THE EMPLOYEES RECOGNIZED THAT HIS ACTIONS WERE CONTRARY TO THE PURPOSE AND INTENT OF MANAGEMENT, SUCH ACTIVITIES MAY WELL NOT ADVERSELY AFFECT THE PETITION.

12. ANOTHER FACT SITUATION IS THE CASE WHERE TWO COMPETING TRADE UNIONS ARE ATTEMPTING TO ORGANIZE EMPLOYEES AT THE SAME TIME. IF A FOREMAN SUPPORTS ONE TRADE UNION IN PREFERENCE TO THE OTHER, IN ALL

LIKELIHOOD, THE FOREMAN'S ACTIVITIES WOULD LIKELY BE VIEWED BY THE EMPLOYEES AS INDICATING MANAGEMENT'S WILLINGNESS TO DEAL WITH THE TRADE UNION SUPPORTED BY THE FOREMAN. IT WOULD BE A REASONABLE INFERENCE THAT THE COERCION OR UNDUE INFLUENCE EXERCISED BY THE FOREMAN IN SUCH A CASE WOULD HAVE DEPRIVED THE EMPLOYEES OF THEIR FREEDOM OF CHOICE AND SUCH ACTIVITY WOULD NOT BE PERMITTED BY THE BOARD (SEE CANADIAN FABRICATED PRODUCTS LIMITED CASE, 54 C.L.L.C. ¶17,090).

13. THE THIRD SITUATION WITH WHICH THE BOARD HAS DEALT IS THE CASE WHERE THE FOREMAN HAS ACTUALLY ORGANIZED THE EMPLOYEES ON BEHALF OF THE UNION BY CAUSING THE EMPLOYEES TO SIGN CARDS IN HIS PRESENCE AND BY ACTING AS THE UNION AGENT IN COLLECTING THE INITIATION FEE. SUCH EXTENSIVE AND DIRECT INVOLVEMENT HAS BEEN TREATED BY THE BOARD AS HAVING DEPRIVED THE EMPLOYEES OF THE EXERCISE OF THEIR FREEDOM OF CHOICE. THE MEMBERSHIP EVIDENCE IN SUCH CASE HAS NOT BEEN GIVEN EFFECT TO BY THE BOARD (SEE MCCARTHY MILLING COMPANY LIMITED CASE, 54 C.L.L.C. ¶17,070, AND SWIFT CANADIAN CO., LIMITED CASE, 54 C.L.L.C. ¶17,071).

14. THE FOURTH INSTANCE OF FOREMAN PARTICIPATION IN A UNION'S ORGANIZING CAMPAIGN IS THE CASE WHERE THE FOREMAN SPEAKS IN FAVOUR OF A UNION IN A SITUATION WHERE NO OTHER UNION IS COMPETING FOR THE EMPLOYEES' MEMBERSHIP AND THE FOREMAN'S SUPPORT OF THE UNION IS IN A FORM WHICH EMPLOYEES CAN READILY RECOGNIZE AS BEING CONTRARY TO THE WISHES OF THE COMPANY. IF THE FOREMAN HAS ACTED IN A MANNER WHERE NO COERCION TAKES PLACE AND HIS ACTIVITIES ARE RECOGNIZED AS BEING IN SUPPORT OF THE EMPLOYEES' EFFORTS TO PLACE THEMSELVES IN A STRONGER POSITION WITH RESPECT TO THE EMPLOYER IN ORDER TO ATTEMPT TO BETTER THEMSELVES, OR IF HE ALIGNS HIMSELF WITH THE EMPLOYEES' INTERESTS AGAINST WHAT THE EMPLOYEES ARE LIKELY TO BELIEVE TO BE THE EMPLOYER'S POSITION WITH RESPECT TO THE UNION, IT CANNOT BE SAID THAT THE FOREMAN HAS REPRESENTED THE EMPLOYER BY HIS ACTIVITIES. NEITHER CAN IT BE SAID THAT THE EMPLOYEES WERE UNDULY INFLUENCED BY THE FOREMAN'S SUPPORT BECAUSE OF THE FOREMAN'S POSITION IN THE MANAGEMENT STRUCTURE. WHERE THE EVIDENCE ESTABLISHES THAT THE EMPLOYEES ARE NOT LIKELY TO TREAT THE FOREMAN'S ACTIVITIES AS ACTIVITIES OF THE EMPLOYER, OR SUCH ACTIVITIES ARE READILY RECOGNIZABLE AS BEING CONTRARY TO THE WISHES OF THE EMPLOYER, IT CANNOT BE SAID THAT THE MEMBERSHIP EVIDENCE OBTAINED AT THE BEHEST OF PROPER UNION ORGANIZERS HAS BEEN CAST IN DOUBT BY THE FOREMAN'S ACTIVITIES. IN THIS REGARD, WE ADOPT THE REASONING CONTAINED IN THE AIR LIQUIDE DECISION, 64 C.L.L.C. ¶16,002.

15. WHEN THE ABOVE CRITERIA ARE APPLIED TO THE FACTS OF THIS CASE, WE FIND THAT THERE WAS NO EVIDENCE TO ESTABLISH THAT MR. DOUGHTY SUPPORTED THE APPLICANT UNION. ON THE CONTRARY, THE EVIDENCE OF AT LEAST ONE OF THE RESPONDENT'S WITNESSES WOULD SEEM TO INDICATE THAT MR. DOUGHTY'S ACTIVITIES IN THE MONTH OF MARCH WERE IN SUPPORT OF SOME OTHER TRADE UNION. NOTHING IN WHAT MR. DOUGHTY DID COULD BE DESCRIBED AS COERCION AND WHILE WE ARE NOT PREPARED TO FIND THAT THE EMPLOYEES

WOULD VIEW HIS ACTIVITIES AS REPRESENTATIVE OF THE EMPLOYER'S WISHES, EVEN IF WE MADE SUCH A FINDING, THERE IS NO EVIDENCE THAT HIS ACTIVITIES COULD BE CONSTRUED AS UNDUE INFLUENCE IN SUPPORT OF THE APPLICANT UNION. SINCE THE RESPONDENT HAS FAILED TO TIE IN MR. DOUGHTY'S ACTIVITIES WITH THE APPLICANT'S ORGANIZING CAMPAIGN, AND HAVING REGARD TO THE NATURE OF AND TIME DURING WHICH MR. DOUGHTY'S ACTIVITIES TOOK PLACE, WE ARE NOT PREPARED TO FIND THAT THE APPLICANT'S MEMBERSHIP EVIDENCE HAS BEEN DESTROYED OR CAST IN DOUBT BY THE ACTIVITIES OF MR. DOUGHTY.

16. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

17. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, RETAIL STORE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

18. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 14TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

19. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14566-68-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. AIRLINE FOOTWEAR INDUSTRIES, A DIVISION OF J. D. CARRIER SHOE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND ALBERT HERSHKOVITZ FOR THE APPLICANT, JOSEPH D. CARRIER AND W. S. COOK FOR THE RESPONDENT, AND MISS ETHEL BIRLEY FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: JUNE 27, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD, BY DECISION DATED JUNE 4TH, 1968, DIRECTED A REPRESENTATION VOTE TO BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE.

2. BY LETTER DATED JUNE 13TH, 1968, THE RESPONDENT ADVISED THE BOARD THAT, AT A MEETING HELD BETWEEN THE PARTIES ON THURSDAY, JUNE 13TH, 1968, THE RESPONDENT INFORMED THE UNION OFFICIALS THAT THE RESPONDENT HAD NO EMPLOYEES ON JUNE 4TH, 1968, AND THAT THE COMPANY HAD CEASED OPERATIONS.

3. BY LETTER DATED JUNE 17TH, 1968, THE APPLICANT REQUESTED THE BOARD TO HAVE ITS EXAMINER INQUIRE INTO THE MATTER TO ASCERTAIN IF IN FACT THE RESPONDENT'S OPERATIONS HAD BEEN DISCONTINUED OR WHETHER THE RESPONDENT HAS MERELY CEASED OPERATIONS UNDER ONE NAME AND COMMENCED THE SAME OPERATIONS UNDER A DIFFERENT NAME.

4. THE RESPONDENT, BY LETTER DATED JUNE 21ST, 1968, STATES THAT IT WAS OF THE OPINION THAT THE UNION OFFICIALS WERE SATISFIED AS TO THE FACTS IN THIS MATTER AT THE MEETING ON THURSDAY, JUNE 13TH, 1968. THE RESPONDENT STATES THAT IF THIS IS NOT THE CASE, IT WOULD WELCOME THE APPOINTMENT OF AN EXAMINER IN ORDER THAT THE CREDIBILITY OF THE COMPANY SHOULD NOT REMAIN IN QUESTION.

5. IN LIGHT OF THE FOREGOING, MR. R. A. WOOLAND, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD AS TO WHETHER THE RESPONDENT, AIRLINE FOOTWEAR INDUSTRIES, A DIVISION OF J. D. CARRIER SHOE COMPANY LIMITED, HAD SOLD ITS INJECTION MOULDING PLANT AND CEASED OPERATIONS, AND DISCHARGED ALL ITS EMPLOYEES ON OR BEFORE JUNE 4TH, 1968.

14591-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL UNION 93 (APPLICANT) V. HERBERT BRUNE CONSTRUCTION LTD.
(RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: V.P. NELLIGAN AND MARK MCKENNY FOR THE APPLICANT AND DAVID SANDLER FOR THE GROUP OF EMPLOYEES AND NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 17, 1968.

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4. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

5. THE BOARD FURTHER FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

6. FOUR EMPLOYEES IN THE BARGAINING UNIT FILED INDIVIDUAL STATEMENTS OF DESIRE OBJECTING TO THE APPLICATION. AS A RESULT THEREOF, THE MATTER WAS LISTED FOR HEARING TO INQUIRE INTO ALL OUTSTANDING ISSUES INCLUDING THE STATEMENTS OF OBJECTION FILED BY THE EMPLOYEES. AS NOTED ABOVE THE RESPONDENT WAS NOT REPRESENTED AT THE HEARING BUT THE EMPLOYEES WERE REPRESENTED BY COUNSEL. COUNSEL INFORMED THE BOARD THAT HE WAS NOT CALLING ANY EVIDENCE IN CONNECTION WITH THE STATEMENTS OF OBJECTION. HE SUBMITTED, HOWEVER, THAT THE FILING OF THE WRITTEN OBJECTIONS WAS SUFFICIENT TO WARRANT THE BOARD CONDUCTING SOME OTHER KIND OF INQUIRY (WHICH HE DID NOT SPECIFY) INTO THE OBJECTIONS OR IN THE ALTERNATIVE TO ORDER A REPRESENTATION VOTE. IT SHOULD BE NOTED THAT EVIDENCE OF MEMBERSHIP IN THE APPLICANT TRADE UNION WAS FILED FOR ONLY ONE OF THE OBJECTORS.

7. FORM 52, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION, CONSTRUCTION INDUSTRY, WHICH WAS DULY POSTED BY THE RESPONDENT ON ITS PREMISES, PROVIDES AS FOLLOWS IN PARAGRAPH 7:

"7. SHOULD THE BOARD DIRECT THAT A HEARING OF THE APPLICATION TAKE PLACE BEFORE THE BOARD, ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 4 AND 5 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE TO AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.*

*EXPLANATORY NOTE: WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED IN PARAGRAPH 8 ABOVE, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT."

8. AS TO COUNSEL'S FIRST SUBMISSION, THE PURPOSE OF THE HEARING WAS TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE ORIGINATION OF THE STATEMENTS OF OBJECTION AND THE MANNER IN WHICH EACH OF THE SIGNATURES THEREON WAS OBTAINED. COUNSEL CHOSE TO CALL NO EVIDENCE ON THIS POINT AND WE SEE NO JUSTIFICATION FOR CONDUCTING SOME FURTHER INQUIRY.

9. WITH RESPECT TO HIS SECOND SUBMISSION, COUNSEL WAS UNABLE TO ADVANCE ANY SPECIAL CIRCUMSTANCES AS TO WHY THE BOARD SHOULD DEPART FROM ITS NORMAL PRACTICE OF NOT GIVING WEIGHT TO STATEMENTS OF OBJECTION WHOSE ORIGATION, PREPARATION AND MANNER OF SIGNATURE HAVE NOT BEEN EXPLAINED TO THE BOARD. IN THESE CIRCUMSTANCES, WE ARE NOT PREPARED TO FIND THAT THE DOCUMENTS IN QUESTION SO WEAKEN THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT AS TO WARRANT THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

10. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 21, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

11. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14642-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. AIRCRAFT APPLIANCES AND EQUIPMENT LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: ROBERT WHITE AND JACK PAWSON FOR THE APPLICANT AND LADISLAV V. MYSLIVEC, D. SCHMIDT, R.M. LEATHEM AND WAMER D. FIPS FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 21, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 5, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. THE RESPONDENT SUBMITTED THAT THE BOARD SHOULD DIRECT A REPRESENTATION VOTE RATHER THAN CERTIFY THE APPLICANT OUTRIGHT ON THE GROUND THAT THE EMPLOYEES, OR SOME OF THEM DID NOT FULLY UNDERSTAND WHAT THEY WERE DOING WHEN THEY SIGNED MEMBERSHIP CARDS FOR THE APPLICANT. HOWEVER, THE RESPONDENT DID NOT GIVE NOTICE OF ITS INTENTION TO RAISE THESE MATTERS NOR DID IT CALL ANY EVIDENCE IN SUPPORT THEREOF. REFERENCE IS MADE TO THE ALCAN-COLONY CASE, O.L. R.B., MONTHLY REPORT JUNE 1963, P. 159.

6. HAVING REGARD TO THE ABOVE CONSIDERATIONS, A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14653-68-R: LAIDLAW TRANSPORT EMPLOYEES ASSOCIATION (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION No. 199, N.C.C.L. (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: R.C. SILLS FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, AND NO ONE FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 24, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF THE TOWNSHIP OF PUSLINCH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, DISPATCHERS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. AS EVIDENCE OF MEMBERSHIP THE APPLICANT FILED A SERIES OF DOCUMENTS IN WHICH EACH SIGNATORY STATES: "I WISH TO BE REPRESENTED BY LAIDLAW TRANSPORT EMPLOYEES ASSOCIATION FOR COLLECTIVE BARGAINING PURPOSES." THE DOCUMENTS DO NOT CONTAIN ANY REFERENCE TO "MEMBERSHIP" IN THE APPLICANT. ACCOMPANYING THESE STATEMENTS OF DESIRE WERE DUPLICATE RECEIPTS FOR \$1.00, SIGNED BY THE PERSONS WHO HAD COLLECTED THE MONEY BUT NOT COUNTERSIGNED BY THE PAYOR. SOME OF THE RECEIPTS ARE MARKED "UNION FEE" OR "UNION DUES" OR AGAIN "ASSOCIATION DUES". IN NONE OF THE RECEIPTS IS MENTION MADE OF THE LAIDLAW TRANSPORT EMPLOYEES ASSOCIATION AS SUCH.

5. HOWEVER, THE DOCUMENTS TENDERED AS MEMBERSHIP EVIDENCE LEAVE A GREAT DEAL TO BE DESIRED, FOR EVEN IF THEY WERE IN THE USUAL FORM ACCEPTABLE TO THE BOARD, THEY WOULD NOT, IN THE CIRCUMSTANCES HEREIN, CONSTITUTE

VALID EVIDENCE OF MEMBERSHIP. THE EVIDENCE INDICATES THAT THE DOCUMENTS WERE SIGNED AT A MEETING HELD SOME DAYS BEFORE THE MEETING AT WHICH THE CONSTITUTION WAS ADOPTED. IN THE ABSENCE OF EVIDENCE THAT THE ALLEGED MEMBERS DID SOME OTHER ACT CONSISTENT WITH MEMBERSHIP AFTER THE APPLICANT CAME INTO BEING, OR IN THE ABSENCE OF SOME MOTION BY THE APPLICANT RECTIFYING THE MEMBERSHIP OF PERSONS WHO APPLIED (IF THAT TERM IS APPROPRIATE HEREIN) FOR MEMBERSHIP PRIOR TO THE ADOPTION OF THE CONSTITUTION, THE BOARD DOES NOT REGARD SUCH EVIDENCE AS VALID EVIDENCE OF MEMBERSHIP. SEE M. LOEB CASE, O.L.R.B. MONTHLY REPORT, MAY, 1962, P. 69.

6. HAVING REGARD TO THE FOREGOING, THE BOARD IS NOT SATISFIED THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 4TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. THE APPLICATION IS THEREFORE DISMISSED.

14660-68-R: TORONTO PRINTING PRESSMEN AND ASSISTANTS' UNION No. 10 (APPLICANT) V. CANADIAN PACIFIC HOTELS LIMITED (RESPONDENT) V. HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 299, TORONTO, OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: T. B. OSBORNE, A. W. HALL AND J. MCKENZIE FOR THE APPLICANT, J. G. DAY AND G. I. FERGUSON FOR THE RESPONDENT, R. B. CUMINÉ AND W. KOWALCHUK FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 24, 1968.

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2. THE APPLICANT IS SEEKING TO CARVE OUT A CRAFT UNIT FROM AN "ALL EMPLOYEE" UNIT REPRESENTED BY THE INTERVENER. MORE PARTICULARLY, THE APPLICANT IS SEEKING CERTIFICATION AS BARGAINING AGENT FOR A UNIT COMPOSED OF ALL JOURNEYMEN PRESSMEN, COMBINATION PRESS-COMPOSITORS, ASSISTANT PRESSMEN AND APPRENTICE PRESSMEN IN THE EMPLOY OF THE RESPONDENT AT ITS ROYAL YORK HOTEL IN TORONTO.

3. THE INTERVENER AND THE RESPONDENT HAVE BEEN PARTIES TO A COLLECTIVE BARGAINING-RELATIONSHIP COMMENCING IN 1948. SINCE THAT TIME THE INTERVENER AND THE RESPONDENT HAVE ENTERED INTO A CONTINUOUS SERIES OF

COLLECTIVE AGREEMENTS COVERING THE EMPLOYEES OF THE RESPONDENT AT THE ROYAL YORK HOTEL INCLUDING THOSE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. THE INTERVENER IN ALL OF ITS NEGOTIATIONS WITH THE RESPONDENT HAS BARGAINED SEPARATE WAGE RATES FOR THE CLASSIFICATIONS OF EMPLOYEES CONCERNED IN THIS APPLICATION WHICH HAVE BEEN INCORPORATED IN THE COLLECTIVE AGREEMENTS EXECUTED BY THE PARTIES. AT ONE TIME A MEMBER OF THE CRAFT GROUP IN QUESTION WAS VICE-PRESIDENT OF THE INTERVENER UNION. ON ANOTHER OCCASION A MEMBER OF THE SAME GROUP WAS TREASURER OF THE UNION.

4. BY THE PROVISIONS OF SECTION 6 SUBSECTION 2 OF THE ACT, WHERE AN APPLICATION IS MADE WITH RESPECT TO A GROUP OF EMPLOYEES WHO EXERCISE TECHNICAL SKILLS OR ARE MEMBERS OF A CRAFT BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT, ACCORDING TO ESTABLISHED TRADE UNION PRACTICE, PERTAINS TO SUCH SKILLS OR CRAFT, THE BOARD SHALL DEEM SUCH A GROUP OF EMPLOYEES TO CONSTITUTE A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING IF THE APPLICATION IS MADE BY A TRADE UNION PERTAINING TO SUCH SKILLS. THE CONCLUDING WORDS OF SUBSECTION 2, HOWEVER, CONTAIN THE PROVISIO THAT THE BOARD SHALL NOT BE REQUIRED TO APPLY SUBSECTION 2 WHERE THE GROUP OF EMPLOYEES IS INCLUDED IN A BARGAINING UNIT REPRESENTED BY ANOTHER BARGAINING AGENT AT THE TIME THE APPLICATION IS MADE.

5. AS HAS BEEN STATED, THE EMPLOYEES AFFECTED BY THE INSTANT APPLICATION HAVE BEEN REPRESENTED BY THE INTERVENER FOR TWENTY YEARS. MOREOVER, THE EVIDENCE IS THAT THE INTERVENER HAS NEGOTIATED SEPARATE WAGE RATES FOR THE EMPLOYEES CONCERNED. THE APPLICANT CLAIMS, HOWEVER, THAT THE MEMBERS OF THE CRAFT FOR WHICH IT IS SEEKING CERTIFICATION HAVE NOT BEEN ADEQUATELY REPRESENTED IN THAT THE WAGE RATES BEING PAID TO THEM ARE SUBSTANTIALLY LOWER THAN THOSE CURRENTLY BEING PAID BY EMPLOYERS IN COMMERCIAL PRINTING BUSINESSES.

6. IN THE SYNDICAT D'OEUVRES SOCIALES, LIMITEE CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 748, THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA, OTTAWA LOCAL NO. 5, UNDER SECTION 6(2) OF THE ACT, SOUGHT TO CARVE OUT A UNIT CONSISTING OF WEB NEWSPAPER PRESSMEN AND WEB OFFSET PRESSMENT FROM AN "ALL EMPLOYEE" UNIT. IN THAT CASE, THE APPLICANT LED EVIDENCE TO THE EFFECT THAT THE RATES OF WAGES PAID TO THE EMPLOYEES AFFECTED BY THE APPLICATION WERE NOT AS HIGH AS THE WAGES RECEIVED BY PERSONS PERFORMING SIMILAR WORK ON THE STAFF OF OTHER NEWSPAPERS. THE BOARD STATED AT P. 749:

IT SHOULD BE NOTED THAT THE RESPONDENT IS ENGAGED IN BOTH NEWSPAPER AND COMMERCIAL PRINTING, REQUIRING THE SERVICES OF EMPLOYEES AFFECTED BY THIS APPLICATION. THE ISSUE, HOWEVER, IS NOT THE BARGAINING EFFECTIVENESS OF THE INTERVENER, THE ISSUE IS RATHER WHETHER THE INTERVENER HAS REPRESENTED THE GROUP OF EMPLOYEES IN QUESTION PROPERLY, HAVING IN MIND

THEIR STATUS AS MEMBERS OF A CRAFT, AND NOT
NEGLECTED THEM IN RELATION TO OTHER CLASSES
OF EMPLOYEES IN THE BARGAINING UNIT.

7. HAVING REGARD TO THE EVIDENCE OF COLLECTIVE BARGAINING THAT HAS
TRANSPIRED ON BEHALF OF THE EMPLOYEES WHO ARE THE SUBJECT OF THE INSTANT
APPLICATION, WE ARE SATISFIED THAT, IN THE CONTEXT OF THE RESPONDENT'S
OPERATIONS AT THE ROYAL YORK HOTEL, THEY HAVE BEEN PROPERLY REPRESENTED
BY THE INTERVENER. FURTHER, HAVING IN MIND THE INTERVENER'S LONG HIS-
TORY OF REPRESENTING THE EMPLOYEES OF THE RESPONDENT, WE ARE OF THE
OPINION THAT THE BARGAINING UNIT SOUGHT BY THE APPLICANT IS NOT APPRO-
PRIATE IN THE CIRCUMSTANCES OF THE INSTANT CASE. (SEE CANADA FOUNDRIES
AND FORGINGS LTD. CASE, C.L.L.C. VOL. 2, 1960-1964, ¶16,203; KENT TILE
& MARBLE CO. LTD. CASE, C.L.L.C. VOL. 2, 1960-1964, ¶16204.)

8. THE APPLICATION IS ACCORDINGLY DISMISSED.

14679-68-R: RCA VICTOR EMPLOYEES' ASSOCIATION (APPLICANT) V. RCA VICTOR
COMPANY, LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND
R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. M. LOUDON FOR THE APPLICANT,
A. J. CLARK FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 21, 1968.

1. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT
FOR CERTAIN EMPLOYEES OF THE RESPONDENT WHO ARE EMPLOYED AT THE RES-
PONDENT'S SERVICE BRANCH 16 MARTIN ROSS AVENUE IN METROPOLITAN TORONTO
AND ITS DISTRIBUTION WAREHOUSE 1450 CASTLEFIELD AVENUE IN METROPOLITAN
TORONTO. AT THE TIME THE APPLICATION WAS MADE, THE APPLICANT AND THE
RESPONDENT WERE PARTIES TO A COLLECTIVE AGREEMENT WHICH WAS TO REMAIN
IN FULL FORCE AND EFFECT UNTIL JUNE 15TH, 1968. THIS AGREEMENT COVERED
ALL EMPLOYEES OF THE RESPONDENT AT ITS DISTRIBUTION AND SERVICE WARE-
HOUSE, METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, ADMINISTRATORS,
BRANCH CLERKS, PERSONS ABOVE THE RANK OF SUPERVISOR, ADMINISTRATOR AND
BRANCH CLERK, SALESMEN, THE SECRETARY TO THE BRANCH MANAGER, ONE STENO-
GRAPHER TO THE MANAGER OF OPERATIONS AND THE MANAGER OF SALES, ONE STENO-
GRAPHER TO THE CREDIT MANAGER, ONE STENOGRAPHER TO THE TORONTO MANAGER OF
BROADCAST AND INDUSTRIAL PRODUCTS MARKETING, ONE PERSON TO DO STENO-
GRAPHIC WORK FOR THE SERVICE MANAGER, ONE PERSON TO DO STENOGRAPHIC WORK
FOR THE TECHNICAL PRODUCTS SERVICE MANAGER AND STUDENTS HIRED FOR THE
SCHOOL VACATION PERIOD.

2. AT THE HEARING IN THIS MATTER, THE RESPONDENT OBJECTED TO THE
APPLICATION ON THE GROUNDS THAT THE COLLECTIVE AGREEMENT REFERRED TO
ABOVE COVERED ALL THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED.

3. IN VIEW OF THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT REFERRED TO ABOVE, AND THE POSITION TAKEN BY THE RESPONDENT, THE BOARD FINDS, FOR THE REASONS GIVEN IN THE LOBLAW GROCETERIAS Co. LTD. CASE, 46 C.L.L.C. ¶16,411, THAT SINCE THE APPLICANT IS CURRENTLY THE BARGAINING AGENT FOR THE PERSONS WITH WHOM WE ARE HERE CONCERNED, NOTHING CAN BE ADDED TO THE APPLICANT'S BARGAINING RIGHTS BY THE ISSUANCE OF A NEW CERTIFICATE BY THIS BOARD, AND THE APPLICATION IS THEREFORE TERMINATED.

INDEXED ENDORSEMENTS - TERMINATION

14463-68-R: VICTOR P DRURY & ALBERT NANGINI (APPLICANTS) V. INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 424 (RESPONDENT) V. NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD. (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS A. MAIN AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: H. SEDGWICK, VICTOR P. DRURY AND ALBERT NANGINI FOR THE APPLICANTS, TED WOHL AND HUGH WALTON FOR THE RESPONDENT, A. A. WHITE AND J. M. SHEPHERD FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 25, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT.

2. A REPRESENTATION VOTE WAS TAKEN IN THIS MATTER ON MAY 22ND, 1968. TWO OF THE BALLOTS CAST BY EMPLOYEES OF THE INTERVENER ON THE TAKING OF THE REPRESENTATION VOTE WERE MARKED AS FOLLOWS:

MARK "X" OPPOSITE YOUR CHOICE		
IN YOUR EMPLOYMENT RELATIONS WITH		
NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD.,		
DO YOU WISH TO BARGAIN COLLECTIVELY THROUGH		
INTERNATIONAL CHEMICAL WORKERS UNION LOCAL 424?	YES	
	NO	NO

3. THE RESPONDENT'S AGENT AT THE COUNT AGREED THAT THE TWO BALLOTS IN QUESTION HAD BEEN MARKED AGAINST THE RESPONDENT.

4. FOLLOWING THE REPRESENTATION VOTE, THE RESPONDENT CHALLENGED THE VOTE ON THE GROUNDS THAT THE TWO BALLOTS WHICH HAD BEEN MARKED BY THE PRINTED WORD "NO" DID NOT COMPLY WITH THE BOARD'S REQUIREMENTS, SINCE THEY DID NOT CLEARLY INDICATE THE CHOICE OF THE PERSONS WHO MARKED THE BALLOTS, AND, IN ADDITION, THEIR IDENTITY MIGHT BE DETERMINED AS A RESULT OF THE MANNER IN WHICH THEY HAD MARKED THEIR BALLOTS.

5. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE OBJECTIONS OF THE RESPONDENT, THE BOARD FINDS THAT THE BALLOTS DESCRIBED ABOVE CLEARLY INDICATE THE WISHES OF THE EMPLOYEES WHO MARKED THEM. WHILE IT IS PREFERABLE THAT THE EMPLOYEES INDICATE THEIR CHOICE OF THE SPECIMEN ANSWER WHICH APPEARS ON THE FACE OF THE BALLOT BY MARKING AN "X" OPPOSITE THEIR CHOICE, SUCH CHOICE MAY ALSO BE CLEARLY INDICATED BY REPEATING THE SPECIMEN ANSWER AS WAS DONE BY THE TWO EMPLOYEES IN THIS CASE. SINCE THERE IS NO OTHER WRITING ON THE BALLOT, WE ARE CONTENT THAT THE PRINTED WORD "NO" IN NO WAY INDICATES THE IDENTITY OF THE VOTER IN THIS CASE.

6. WHILE THERE ARE A MULTITUDE OF CASES CONCERNING ELECTIONS UNDER THE ELECTION ACT, IT SHOULD BE POINTED OUT THAT THIS BOARD IS NOT BOUND BY THE PROVISIONS OF THAT ACT AND SUCH CASES ARE NOT NECESSARILY HELPFUL TO THE DETERMINATION OF THIS MATTER. ON REPRESENTATION VOTES CONDUCTED BY THIS BOARD, BALLOTS SHOULD BE COUNTED WHERE THE CHOICE OF THE VOTER IS CLEARLY INDICATED ON THE FACE OF THE BALLOT AND THE IDENTITY OF THE VOTER IS NOT DISCLOSED. WHERE THESE TWO TESTS ARE SATISFIED, EVEN THOUGH THE BALLOT HAS NOT BEEN MARKED WITH AN "X", THERE IS NO REASON TO DISCARD THE BALLOT AS A SPOILED BALLOT.

7. THE BOARD THEREFORE FINDS THAT THE TWO BALLOTS MARKED IN THE MANNER DESCRIBED ABOVE ARE BALLOTS MARKED AGAINST THE RESPONDENT UNION IN THIS CASE. THIS FINDING IS CONSISTENT WITH THE POSITION TAKEN BY THE RESPONDENT IMMEDIATELY FOLLOWING THE TAKING OF THE REPRESENTATION VOTE AND AGREED TO BY THE RESPONDENT'S AGENT AT THE VOTE.

8. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN OPPOSITION TO THE RESPONDENT.

9. THE BOARD DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES AT NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD. PLANT LOCATED AT 371 WALLACE AVENUE, TORONTO 9, FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

10. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

14579-68-R: ROBERT J. GILKES (APPLICANT) V. BROTHERHOOD OF SEALANT
WORKER'S OF ONTARIO (CANADIAN-MARIETTA PRESSTITE DIVISION, GEORGETOWN)
(RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: ROBERT J. GILKES FOR THE APPLICANT,
AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 25, 1968.

1. THIS IS AN APPLICATION UNDER SECTION 43(2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO CERTAIN EMPLOYEES OF INTERCHEM PRESSTITE LIMITED, HEREINAFTER CALLED THE COMPANY, IN A BARGAINING UNIT DESCRIBED IN A COLLECTIVE AGREEMENT MADE BETWEEN THE RESPONDENT AND THE COMPANY. THE COLLECTIVE AGREEMENT REFERRED TO WAS TO BE IN EFFECT FROM APRIL 1ST, 1966, UNTIL APRIL 1ST, 1968, AND FROM YEAR TO YEAR THEREAFTER "UNTIL AND UNLESS EITHER PARTY HAS NOTIFIED THE OTHER PARTY IN WRITING BY REGISTERED MAIL NOT LESS THAN 60 DAYS BEFORE THE EXPIRATION OF THE CONTRACT."

2. SECTION 43(2) READS AS FOLLOWS:

"ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN A COLLECTIVE AGREEMENT MAY, SUBJECT TO SECTION 46, APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT,

- (A) IN THE CASE OF A COLLECTIVE AGREEMENT FOR A TERM OF NOT MORE THAN THREE YEARS, ONLY AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION;
- (B) IN THE CASE OF A COLLECTIVE AGREEMENT FOR A TERM OF MORE THAN THREE YEARS, ONLY AFTER THE COMMENCEMENT OF THE THIRTY-FIFTH MONTH OF ITS OPERATION AND BEFORE THE COMMENCEMENT OF THE THIRTY-SEVENTH MONTH OF ITS OPERATION AND DURING THE TWO-MONTH PERIOD IMMEDIATELY PRECEDING THE END OF EACH YEAR THAT THE AGREEMENT CONTINUES TO OPERATE THEREAFTER OR AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION, AS THE CASE MAY BE;
- (C) IN THE CASE OF A COLLECTIVE AGREEMENT REFERRED TO IN CLAUSE (A) OR (B) THAT PROVIDES THAT IT WILL CONTINUE TO OPERATE FOR ANY FURTHER TERM OR SUCCESSIVE TERMS IF EITHER PARTY FAILS TO GIVE TO THE OTHER NOTICE OF TERMINATION OR OF ITS DESIRE TO BARGAIN WITH A VIEW TO THE RENEWAL,

WITH OR WITHOUT MODIFICATIONS, OF THE AGREEMENT OR TO THE MAKING OF A NEW AGREEMENT, ONLY DURING THE LAST TWO MONTHS OF EACH YEAR THAT IT SO CONTINUES TO OPERATE OR AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION, AS THE CASE MAY BE. R.S.O. 1960, c. 202 s. 43(2); 1966, c. 76, s. 16(2-4)."

3. THE PROVISIONS OF SECTION 46 HAVE NO RELEVANCY IN THE CIRCUMSTANCES UNDER CONSIDERATION IN THIS APPLICATION.

4. THE EVIDENCE AT THE HEARING WAS TO THE EFFECT THAT NO NOTICE OF RENEWAL HAD BEEN SERVED BY EITHER PARTY WITHIN THE SPECIFIED 60 DAYS. THE COLLECTIVE AGREEMENT HAS THEREFORE AUTOMATICALLY RENEWED ITSELF FOR A FURTHER PERIOD OF ONE YEAR FROM THE 1ST OF APRIL 1968.

5. IN VIEW OF THE FOREGOING, AND HAVING REGARD TO THE PROVISIONS OF SECTION 43(2)(c) OF THE LABOUR RELATIONS ACT, THE COLLECTIVE AGREEMENT CONSTITUTES A BAR TO THE APPLICATION FOR TERMINATION OF BARGAINING RIGHTS HEREIN.

6. THE APPLICATION IS THEREFORE DISMISSED.

14637-68-R: LANCE MITCHELL (APPLICANT) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (RESPONDENT) V. LLOYD JOHNSON'S TOWN AND COUNTRY AUTO BODY LIMITED (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: GEORGE W. PRIDDLE, LANCE MITCHELL FOR THE APPLICANT; CALVIN G. FREESE FOR THE RESPONDENT; NO ONE APPEARING FOR THE INTERVENER.

DECISION OF THE BOARD: JUNE 13, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO SECTION 43 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT IS BARGAINING AGENT FOR ALL EMPLOYEES OF LLOYD JOHNSON'S TOWN AND COUNTRY AUTO BODY LIMITED AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

3. A CERTIFICATE COVERING THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 2 ABOVE WAS ISSUED BY THE BOARD TO THE SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 C.L.C. ON APRIL 19TH, 1967. BY ITS DECISION

DATED MARCH 22ND, 1968, THE BOARD DECLARED THAT THE RESPONDENT HEREIN HAD ACQUIRED THE RIGHTS, PRIVILEGES AND DUTIES OF THE SAULT STE. MARIE GENERAL WORKERS UNION LOCAL 1644 C.L.C. NO COLLECTIVE AGREEMENT HAS BEEN ENTERED INTO BETWEEN THE RESPONDENT OR ITS PREDECESSOR AND THE INTERVENER. THE RESPONDENT ADVISED THE BOARD THAT NEGOTIATIONS HAD BEEN TAKING PLACE AND BY LETTER DATED MAY 16TH, 1968 THE RESPONDENT HAD REQUESTED THE MINISTER OF LABOUR TO APPOINT A CONCILIATION OFFICER. THE CONCILIATION OFFICER WAS IN FACT APPOINTED ON MAY 29TH, 1968 THE TERMINAL DATE OF THIS APPLICATION. SECTION 46 OF THE ACT IS AS FOLLOWS:

SUBJECT TO SUBSECTION 3, WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT. NO APPLICATION FOR CERTIFICATION OF A BARGAINING AGENT OF, OR FOR A DECLARATION THAT A TRADE UNION NO LONGER REPRESENTS, THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE UNTIL,

- (A) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF THE CONCILIATION BOARD OR MEDIATOR; OR
- (B) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD; OR
- (C) SIX MONTHS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE OF A REPORT OF THE CONCILIATION OFFICER THAT THE DIFFERENCES BETWEEN THE PARTIES CONCERNING THE TERMS OF A COLLECTIVE AGREEMENT HAVE BEEN SETTLED,

AS THE CASE MAY BE.

SINCE THE PARTIES HAD NOT ENTERED INTO A COLLECTIVE AGREEMENT WITHIN ONE YEAR OF THE CERTIFICATION DATED APRIL 19TH, 1967 AND SINCE A CONCILIATION OFFICER HAD NOT BEEN APPOINTED ON OR BEFORE THE DATE THAT THIS APPLICATION WAS MADE WE FIND THAT THE APPLICATION IS TIMELY.

4. HAVING REGARD FOR ALL THE EVIDENCE AND REPRESENTATIONS PRESENTED TO THE BOARD IN THIS MATTER, THE BOARD IS SATISFIED THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF LLOYD JOHNSON'S TOWN AND COUNTRY AUTO BODY LIMITED IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, HAD VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISHED TO BE REPRESENTED BY THE RESPONDENT UNION ON MAY 29TH, 1968, THE TERMINAL DATE

FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING THE NUMBER OF PERSONS WHO HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY RESPONDENT UNION UNDER SECTION 43(3) OF THE ACT.

5. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF LLOYD JOHNSON'S TOWN AND COUNTRY AUTO BODY LIMITED. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES OF LLOYD JOHNSON'S TOWN AND COUNTRY AUTO BODY LIMITED AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - PROSECUTION

14613-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506
(APPLICANT) v. CORTINA PLASTERING LIMITED AND ANTONIO FERRONATO
(RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. B. WATERMAN, A. NEIL AND E. RAGNO
FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENTS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD
MEMBER E. BOYER: JUNE 25, 1968.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT COMPANY ON THE GROUNDS THAT THE COMPANY REFUSED TO CONTINUE TO EMPLOY AND DISCRIMINATED AGAINST EMILIO BORTOLUZZI AND DOMENICO CONDOLUCCI IN REGARD TO THEIR EMPLOYMENT BECAUSE THEY WERE MEMBERS OF THE APPLICANT TRADE UNION, CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT. THE APPLICANT ALSO IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST BOTH THE RESPONDENT COMPANY AND THE NAMED RESPONDENT ANTONIO FERRONATO, ACTING ON BEHALF OF THE RESPONDENT COMPANY, ON THE GROUNDS THAT THE RESPONDENTS INTERFERED IN THE SELECTION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES OF THE RESPONDENT COMPANY BY A TRADE UNION, CONTRARY TO SECTION 48 OF THE LABOUR RELATIONS ACT.

2. THE EVIDENCE OF DOMENICO CONDOLUCCI IS THAT HE WAS EMPLOYED BY THE RESPONDENT COMPANY AS A LABOURER FOR A PERIOD OF TWO WEEKS. ON THE MORNING OF MAY 10TH, 1968, ANTONIO FERRONATO, THE PRESIDENT OF THE RESPONDENT COMPANY, REPEATEDLY INQUIRED OF CONDOLUCCI AS TO HIS UNION ALLEGIANCE. CONDOLUCCI INFORMED FERRONATO THAT HE WAS A MEMBER OF THE APPLICANT. FERRONATO ON THE AFTERNOON OF THE SAME DAY ADVISED CONDOLUCCI THAT THERE WOULD BE NO MORE WORK FOR HIM AND DISCHARGED HIM. CONDOLUCCI'S EVIDENCE IS THAT DURING HIS PERIOD OF EMPLOYMENT WITH THE RESPONDENT COMPANY THERE HAD BEEN NO COMPLAINTS CONCERNING HIS WORK.

3. EMILIO BORTOLUZZI GAVE THE FOLLOWING TESTIMONY. HE HAD BEEN EMPLOYED BY THE RESPONDENT COMPANY AS A NOZZLE SPRAY OPERATOR FOR A PERIOD OF THREE WEEKS. ON THE EVENING OF MAY 12TH, 1968, FERRONATO TELEPHONED AND ASKED BORTOLUZZI WHETHER HE BELONGED TO THE APPLICANT UNION TO WHICH THE LATTER ANSWERED IN THE AFFIRMATIVE. FERRONATO THEN ASKED HIM WHAT HE WOULD DO IF THE APPLICANT WENT ON STRIKE. BORTOLUZZI REPLIED THAT HE WOULD PICKET THE JOB SITE OF THE RESPONDENT COMPANY. FERRONATO THEREUPON ASKED HIM WHAT HE WOULD DO IF THE PLASTERERS' LOCAL 117 WENT ON STRIKE. BORTOLUZZI REPLIED THAT HE WOULD CONTINUE TO WORK. FERRONATO AT THAT POINT TOLD HIM THAT THE BUSINESS AGENT OF LOCAL 117 ADVISED HIM THAT THE OPERATOR OF THE NOZZLE SPRAY HAD TO BE A MEMBER OF LOCAL 117 AND OFFERED TO PAY THE \$175.00 INITIATION FEE FOR BORTOLUZZI TO BECOME A MEMBER. BORTOLUZZI TOLD FERRONATO THAT HE WAS A MEMBER OF THE APPLICANT UNION AND THAT HE DID NOT WANT TO JOIN LOCAL 117. FERRONATO THEREUPON ADVISED HIM THAT THERE WAS NO MORE WORK FOR HIM AND THAT HE WAS DISCHARGED.

4. ANTONIO FERRONATO TESTIFIED AS FOLLOWS. THE RESPONDENT COMPANY HAS HAD A COLLECTIVE BARGAINING RELATIONSHIP WITH LOCAL 117 OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA. THE PARTIES ENTERED INTO A NEW THREE-YEAR COLLECTIVE AGREEMENT EFFECTIVE FROM MAY 1ST, 1968. SOME TIME EARLY IN MAY, THE BUSINESS AGENT FOR LOCAL 117 ADVISED HIM THAT HENCEFORTH THE NOZZLE SPRAY OPERATOR WOULD HAVE TO BE A MEMBER OF LOCAL 117. AS A RESULT OF HIS CONVERSATION WITH THE BUSINESS AGENT OF LOCAL 117, HE TELEPHONED BORTOLUZZI ON MAY 12TH AND TOLD HIM THAT HE HAD TO JOIN LOCAL 117 TO OPERATE THE NOZZLE SPRAY. BORTOLUZZI STATED THAT IT COST TOO MUCH MONEY TO JOIN LOCAL 117. FERRONATO OFFERED TO PAY THE INITIATION FEE OF \$175.00 BUT BORTOLUZZI SAID HE DID NOT WANT TO JOIN LOCAL 117. BORTOLUZZI AT THE SAME TIME TOLD FERRONATO THAT HE WAS A MEMBER OF THE APPLICANT UNION. FERRONATO INFORMED BORTOLUZZI THAT HE WOULD PAY THE INITIATION FEE AND BORTOLUZZI COULD STILL BE A MEMBER OF THE APPLICANT. BORTOLUZZI STILL REFUSED HIS OFFER AND ALSO DECLINED AN OFFER OF A JOB AS A LABOURER. ACCORDING TO FERRONATO, IN THESE CIRCUMSTANCES HE HAD NO FURTHER USE FOR BORTOLUZZI AND THEREFORE ADVISED HIM THAT HE WAS DISCHARGED. FERRONATO ADMITTED THAT HE WAS AWARE THAT THE APPLICANT WAS SEEKING CERTIFICATION FOR THE LABOURERS IN HIS EMPLOY. DARIO DEBONA, A PARTNER IN THE RESPONDENT COMPANY,

TESTIFIED THAT BORTOLUZZI WAS A GOOD WORKER BUT THAT HE WAS DISCHARGED BECAUSE HE DID NOT WANT TO JOIN LOCAL 117.

5. PRIOR TO THE CLAIM MADE BY THE BUSINESS AGENT OF LOCAL 117 TO JURISDICTION OVER THE NOZZLE SPRAY OPERATIONS, THE NOZZLE SPRAY HAD ALWAYS BEEN OPERATED BY A LABOURER. ACCORDING TO THE EVIDENCE, THE RESPONDENT COMPANY HAD AN EARLIER COLLECTIVE AGREEMENT WITH LOCAL 117. NO SUCH AGREEMENT, HOWEVER, WAS FILED AT THE HEARING. FURTHER, THERE IS NO EVIDENCE AS TO WHETHER THE WORK JURISDICTION CLAUSE OF THE CURRENT COLLECTIVE AGREEMENT IS IN ANY WAY DIFFERENT FROM THAT WHICH APPEARED IN THE ALLEGED PRIOR AGREEMENT. THE WORK JURISDICTION CLAUSE IN THE PRESENT AGREEMENT CLAIMS WIDE JURISDICTION OVER PLASTERING WORK BUT MAKES NO SPECIFIC REFERENCE TO THE OPERATIONS OF A NOZZLE SPRAY.

6. COUNSEL FOR THE APPLICANT SUBMITS THAT BOTH CONDOLUCCI AND BORTOLUZZI WERE DISCHARGED BECAUSE THEY WERE MEMBERS OF THE APPLICANT TRADE UNION. IN THE CASE OF CONDOLUCCI, COUNSEL DREW ATTENTION TO THE FACT THAT NO EVIDENCE WAS ADDUCED BY THE RESPONDENTS TO REFUTE THE CLEAR INFERENCE FROM CONDOLUCCI'S OWN EVIDENCE THAT HE WAS DISCHARGED BECAUSE OF HIS MEMBERSHIP IN THE APPLICANT. WITH REGARD TO BORTOLUZZI, COUNSEL EMPHASIZED THAT LABOURERS, OR, TO USE A SYNONYMOUS DESCRIPTION, PLASTERERS' HELPERS, UNTIL MAY OF THIS YEAR, HAD ALWAYS OPERATED THE NOZZLE SPRAY. COUNSEL NOTED THAT DESPITE THIS FACT, FERRONATO, WITHOUT QUESTION AND WITH GREAT ALACRITY, COMPLIED WITH THE REQUEST OF THE BUSINESS AGENT OF LOCAL 117 AND, IN EFFECT, DEMANDED THAT BORTOLUZZI BECOME A MEMBER OF THAT UNION. WHEN BORTOLUZZI ADMITTED HIS MEMBERSHIP IN THE APPLICANT AND DECLINED TO JOIN LOCAL 117, FERRONATO DISCHARGED HIM. COUNSEL ARGUES THAT THERE IS NO EVIDENCE BEFORE THE BOARD THAT WOULD REASONABLY CAUSE FERRONATO TO ASSUME THAT LOCAL 117 HAD SUDDENLY ACQUIRED JURISDICTION OVER THE NOZZLE SPRAY OPERATIONS OR THAT ANY LABOURERS IN HIS EMPLOY WERE REQUIRED TO BECOME MEMBERS IN LOCAL 117. IN THIS REGARD, COUNSEL REFERRED TO THE DECISION IN THE ROSELAWN PLASTERING CO. LTD. CASE, O.L.R.B. MONTHLY REPORT, MARCH 1968, P. 1178, IN WHICH THE BOARD FOUND THAT UNDER THE CONSTITUTION OF THE OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL 117 DID NOT HAVE JURISDICTION TO ACCEPT PLASTERERS' HELPERS INTO MEMBERSHIP. COUNSEL SUBMITS THAT THE EVIDENCE BEFORE THE BOARD SUPPORTS THE CONCLUSION THAT FERRONATO PURPOSELY GAVE PREFERENTIAL TREATMENT TO LOCAL 117 OVER THE APPLICANT, IN CONTRAVENTION OF SECTION 48 OF THE ACT. COUNSEL FURTHER SUBMITS THAT THE EVIDENCE SUPPORTS A FINDING THAT FERRONATO DISCHARGED BORTOLUZZI BECAUSE OF HIS MEMBERSHIP IN THE APPLICANT, CONTRARY TO SECTION 50(A) OF THE ACT.

7. COUNSEL FOR THE RESPONDENT SUBMITS THAT FERRONATO, RIGHTLY OR WRONGLY, BASED ON THE CLAIM OF BUSINESS AGENT OF LOCAL 117, BELIEVED HE WAS OBLIGATED UNDER THE MAY 1ST, 1968 COLLECTIVE AGREEMENT TO EMPLOY A MEMBER OF LOCAL 117 TO OPERATE THE NOZZLE SPRAY. COUNSEL ARGUES THAT

IT WAS THIS BELIEF THAT CAUSED HIM TO TRY TO INDUCE BORTOLUZZI TO JOIN LOCAL 117 BY OFFERING TO PAY THE INITIATION FEE SO THAT HE COULD CONTINUE TO OPERATE THE NOZZLE SPRAY AND ALSO THEREBY AVOID DIFFICULTIES WITH LOCAL 117. COUNSEL ARGUES THAT THIS IS NOT A CASE OF THE RESPONDENT GIVING PREFERENTIAL TREATMENT TO ONE UNION OVER ANOTHER AND THAT ACCORDINGLY THERE HAS BEEN NO VIOLATION OF SECTION 48 OF THE ACT. FURTHER, COUNSEL ARGUES THAT FERRONATO'S DISCHARGE OF BORTOLUZZI WAS NOT PROMPTED BY THE LATTERS' MEMBERSHIP IN THE APPLICANT. RATHER FERRONATO TOOK THIS ACTION BECAUSE BORTOLUZZI REFUSED TO JOIN LOCAL 117 OR TO ACCEPT OTHER WORK AS A LABOURER. COUNSEL SUBMITS THAT IN THESE CIRCUMSTANCES THERE HAS NOT BEEN A VIOLATION OF SECTION 50(A) OF THE ACT.

8. IN LIGHT OF THE EVIDENCE OF CONDOLUCCI, WHICH WAS NOT DISPUTED BY THE RESPONDENTS, THE BOARD FINDS THAT THERE IS SUFFICIENT GROUND FOR THE BOARD TO GRANT LEAVE TO THE APPLICANT TO INSTITUTE A PROSECUTION OF THE RESPONDENT COMPANY FOR AN ALLEGED VIOLATION OF SECTION 50(A) OF THE ACT WITH RESPECT TO CONDOLUCCI. AS WELL AS DISCHARGING CONDOLUCCI, THE RESPONDENT COMPANY TWO DAYS LATER ALSO DISCHARGED BORTOLUZZI. BOTH OF THEM WERE KNOWN BY THE RESPONDENT TO BE MEMBERS OF THE APPLICANT, AT A TIME WHEN THE APPLICANT WAS SEEKING CERTIFICATION FOR THE LABOURERS IN THE EMPLOY OF THE RESPONDENT COMPANY. HAVING REGARD TO THIS PARTICULAR SET OF CIRCUMSTANCES, THE BOARD FINDS THAT THERE IS SUFFICIENT BASIS UPON WHICH TO GRANT LEAVE TO THE APPLICANT TO INSTITUTE A PROSECUTION OF THE RESPONDENT COMPANY FOR AN ALLEGED VIOLATION OF SECTION 50(C) OF THE ACT WITH RESPECT TO BORTOLUZZI. FINALLY, BASED ON THE EVIDENCE AND THE SUBMISSIONS OF COUNSEL, IT IS AN ARGUABLE QUESTION AS TO WHETHER THE RESPONDENTS CONTRAVENED SECTION 48 OF THE ACT. FOR THIS REASON, THE BOARD IS PREPARED TO GRANT LEAVE TO THE APPLICANT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR AN ALLEGED VIOLATION OF SECTION 48 OF THE ACT.

9. THE BOARD ACCORDINGLY CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT CORTINA PLASTERING LIMITED FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

- (1) THAT ON OR ABOUT MAY 10TH, 1968, THE RESPONDENT DISCHARGED DOMENICO CONDOLUCCI BECAUSE OF HIS MEMBERSHIP IN THE APPLICANT TRADE UNION IN CONTRAVENTION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.
- (2) THAT ON OR ABOUT MAY 10TH, 1968, THE RESPONDENT DISCHARGED EMILIO BORTOLUZZI BECAUSE OF HIS MEMBERSHIP IN THE APPLICANT TRADE UNION IN CONTRAVENTION OF SECTION 50(A) OF THE LABOUR RELATIONS ACT.

10. THE BOARD FURTHER CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENT CORTINA PLASTERING LIMITED AND THE RESPONDENT ANTONIO FERRONATO FOR THE FOLLOWING OFFENCE ALLEGED TO HAVE BEEN COMMITTED:

- (1) THAT ON OR ABOUT MAY 10TH AND 12TH, 1968 THE RESPONDENT COMPANY AND THE NAMED RESPONDENT ACTING ON BEHALF OF THE RESPONDENT COMPANY INTERFERED WITH THE SELECTION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES OF THE RESPONDENT COMPANY BY A TRADE UNION, IN CONTRAVENTION OF SECTION 48 OF THE LABOUR RELATIONS ACT.

11. THE APPROPRIATE DOCUMENTS WILL ISSUE.

DECISION OF BOARD MEMBER R. W. TEAGLE: JUNE 25, 1968.

IN VIEW OF THE EVIDENCE OF DOMENICO CONDOLUCCI, WHICH WAS NOT DISPUTED, I WOULD HAVE GRANTED LEAVE TO THE APPLICANT TO INSTITUTE A PROSECUTION OF THE RESPONDENT COMPANY FOR AN ALLEGED VIOLATION OF SECTION 50(A) OF THE ACT WITH RESPECT TO CONDOLUCCI. THE RESPONDENT COMPANY, HOWEVER, DID NOT DISCHARGE EMILIO BORTOLUZZI ON MAY 12TH, 1968 BECAUSE HE WAS A MEMBER OF THE APPLICANT, BUT RATHER BECAUSE OF HIS REFUSAL TO JOIN LOCAL 117. ACCORDINGLY, I WOULD NOT GRANT LEAVE TO THE APPLICANT TO INSTITUTE A PROSECUTION OF THE RESPONDENT COMPANY FOR AN ALLEGED VIOLATION OF SECTION 50(A) OF THE ACT WITH RESPECT TO BORTOLUZZI.

IN MY OPINION, THE ACTION OF THE RESPONDENTS IN DISCHARGING BORTOLUZZI, IN ESSENCE, WAS DICTATED BY LOCAL 117. IF THERE HAS BEEN ANY VIOLATION OF SECTION 48 OF THE ACT, THE VIOLATION HAS BEEN PERPETRATED BY LOCAL 117. ACCORDINGLY, IN THE EXERCISE OF THE BOARD'S DISCRETION, I WOULD NOT GRANT LEAVE TO THE APPLICANT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR AN ALLEGED VIOLATION OF SECTION 48 OF THE ACT.

14703-68-U: JAMES SPEIRS FRANK MAULE (APPLICANTS) V. A.M. WOOLFREY, OSHAWA, GENERAL MOTORS LIMITED, T.H. GLEN, TORONTO, BRITISH AMERICAN OIL CO. LIMITED, K. G. COOKE, HAMILTON, WESTINGHOUSE, L. G. KERR, DRYDEN, DRYDEN PAPER CO. LIMITED, N.H. WAGE, COPPER CLIFF, INTERNATIONAL NICKEL CO. LTD., J. LAWLER, HAMILTON, STEEL CO. OF CANADA, J.L. MCINTYRE, SAULT STE. MARIE, ALGOMA STEEL CO. (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD:

JUNE 19, 1967.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE NAMED RESPONDENTS. PARAGRAPHS 2 AND 4 OF THE APPLICATION READ AS FOLLOWS:

2. THE NATURE OF THE ALLEGED OFFENCE:

WHEN ACTING AS MEMBERS OF THE GENERAL ADVISORY COMMITTEE IN INDUSTRIAL TRADES DID CONTRARY TO ARTICLE 48 OF THE LABOUR RELATIONS ACT OF ONTARIO, R.S.O. C202 S48 INTERFERE AND ASSIST IN COMPILING AN INTERIM REPORT DATED MARCH 6TH, 1967, ON INDUSTRIAL TRADES RECOMMENDING THE EXCLUSION OF CRAFTSMEN IN GENERAL INDUSTRY FROM COMPULSORY CERTIFICATION WHICH WAS IN OPPOSITION TO THE POLICY OF OUR UNIONS AND THE ONTARIO FEDERATION OF LABOUR. OUR CONDITIONS OF EMPLOYMENT DUE TO THE INTERFERENCE BY THE RESPONDENTS HAS BEEN CHANGED FROM QUALIFIED JOURNEYMEN ELECTRICIANS TO A LIMITED PURPOSE OCCUPATION IN THE ELECTRICAL TRADE IN GENERAL INDUSTRY.

4. THE MATERIAL FACTS UPON WHICH THE APPLICANT INTENDS TO RELY AS ESTABLISHING THE OFFENCE ARE AS FOLLOWS:

THAT THE RESPONDENTS DID PARTICIPATE IN AND INTERFERE WITH THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION.

ATTACHED IS A COPY OF A LETTER WHICH ADVISES US THAT SINCE THIS IS BASICALLY A LEGAL PROBLEM REQUIRING LEGAL ADVICE, WE REQUEST PERMISSION TO APPEAL THIS COMPLAINT TO A HIGHER TRIBUNAL.

2. FOR THE REASONS GIVEN IN A DECISION OF EVEN DATE IN THE CASE OF THE SAME APPLICANTS AGAINST F. W. MURRAY, BOARD FILE No. 14704-68-U, IT IS CLEAR THAT THE APPLICANTS HAVE MISCONSTRUED THE NATURE OF A PROSECUTION FOR AN OFFENCE UNDER THE LABOUR RELATIONS ACT. IT CANNOT BE USED AS AN APPEAL FROM A BOARD DECISION.

3. IN ANY EVENT, THE DATE OF COMMENCEMENT OF THE ALLEGED OFFENCE IS STATED IN PARAGRAPH 3 OF THE APPLICATION TO BE NOVEMBER 22ND, 1966 TO MARCH 29TH, 1967. THUS, MORE THAN SIX MONTHS HAVE ELAPSED SINCE THE OFFENCE IS ALLEGED TO HAVE TAKEN PLACE. SECTION 69 OF THE LABOUR RELATIONS ACT PROVIDES THAT EVERY PERSON, TRADE UNION OR COUNCIL OR TRADE UNIONS OR EMPLOYER'S ORGANIZATION THAT CONTRAVENES ANY PROVISION OF THIS ACT OR OF ANY DECISION, DETERMINATION, INTERIM ORDER, DIRECTION, DECLARATION OR RULING MADE UNDER THIS ACT IS GUILTY OF AN OFFENCE AND ON SUMMARY CONVICTION IS LIABLE TO CERTAIN STATED FINES. (EMPHASIS ADDED)

SECTIONS 2 AND 3 OF THE SUMMARY CONVICTIONS ACT, R.S.O. 1960, c. 387 PROVIDE:

2. SUBJECT TO ANY SPECIAL PROVISION OTHERWISE ENACTED WITH RESPECT TO SUCH OFFENCE, ACT OR MATTER, THIS ACT APPLIES TO,

- (A) EVERY CASE IN WHICH ANY PERSON COMMITS, OR IS SUSPECTED OF HAVING COMMITTED, ANY OFFENCE OR ACT OVER WHICH THE LEGISLATURE HAS LEGISLATIVE AUTHORITY AND FOR WHICH SUCH PERSON IS LIABLE, ON SUMMARY CONVICTION, TO IMPRISONMENT, FINE, PENALTY OR OTHER PUNISHMENT;
- (B) EVERY CASE IN WHICH AN INFORMATION IS LAID BEFORE A JUSTICE IN RELATION TO ANY MATTER OVER WHICH THE LEGISLATURE HAS LEGISLATIVE AUTHORITY AND WITH RESPECT TO WHICH THE JUSTICE HAS AUTHORITY BY LAW TO MAKE AN ORDER FOR THE PAYMENT OF MONEY OR OTHERWISE.

3. EXCEPT WHERE INCONSISTENT WITH THIS ACT, PARTS XIX AND XXIV AND SECTION 20, 21, 22, 446 (IN SO FAR AS IT RELATES TO A WITNESS), 621, 623, 624, 625, 682, 683, 684 AND 689 OF THE CRIMINAL CODE (CANADA), AS AMENDED OR RE-ENACTED FROM TIME TO TIME, APPLY MUTATIS MUTANDIS TO EVERY CASE TO WHICH THIS ACT APPLIES AS IF THE PROVISIONS THEREOF WERE ENACTED IN AND FORMED PART OF THIS ACT.

SECTION 693 OF THE CRIMINAL CODE S.C. 1953-54, c. 51 PROVIDES:

- (1) EXCEPT WHERE OTHERWISE PROVIDED BY LAW THIS PART APPLIES TO PROCEEDINGS AS DEFINED IN THIS PART.
- (2) NO PROCEEDING SHALL BE INSTITUTED MORE THAN SIX MONTHS AFTER THE TIME WHEN THE SUBJECT MATTER OF THE PROCEEDINGS AROSE.

SECTION 693 IS IN PART XXIV OF THE CRIMINAL CODE.

4. IT IS THUS CLEAR THAT EVEN IF THE BOARD WERE TO GRANT CONSENT TO INSTITUTE A PROSECUTION NO PROCEEDINGS COULD BE INSTITUTED IN THE MAGISTRATE'S COURT BECAUSE MORE THAN SIX MONTHS HAVE ELAPSED AFTER THE TIME WHEN THE SUBJECT MATTER OF THE PROCEEDINGS AROSE.

5. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS THAT THE APPLICANTS HAVE FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO THE PROVISIONS OF SECTION 46 (1) OF THE BOARD'S RULES OF PROCEDURE, THE APPLICATION IS HEREBY DISMISSED.

14704-68-U: JAMES SPEIRS FRANK MAULE (APPLICANTS) V. F. W. MURRAY (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: JUNE 19, 1968.

1. THE APPLICANTS HAVE APPLIED TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENT FOR AN OFFENCE UNDER THE ACT.

2. THE RESPONDENT, F. W. MURRAY, IS A MEMBER REPRESENTATIVE OF EMPLOYERS ON THIS BOARD AND, AS SUCH, PARTICIPATED IN AN EARLIER DECISION IN A COMPLAINT BEFORE THE BOARD IN WHICH THE PRESENT APPLICANTS WERE THE COMPLAINANTS.

3. IN THE INSTANT APPLICATION THE APPLICANTS ALLEGE A VIOLATION OF SECTIONS 59A(1)(D) AND 48 OF THE LABOUR RELATIONS ACT. PARAGRAPH 4 OF THE APPLICATION READS AS FOLLOWS:

4. THE MATERIAL FACTS UPON WHICH THE APPLICANT INTENDS TO RELY AS ESTABLISHING THE OFFENCE ARE AS FOLLOWS:

A COMPLAINT SUBMITTED ON THE 6TH MAY, 1968, BY MR. J. SPEIRS AND MR. F. MAULE, COMPLAINANTS, AND F. W. MURRAY, RESPONDENT. THE COMPLAINT CHARGED MR. F.W. MURRAY, EMPLOYERS' REPRESENTATIVE, WITH VIOLATION OF SECTION 59A (1) (D) 1961-62 C68-56 OF THE LABOUR RELATIONS ACT, THAT HE DID COERCE AND IMPOSE A PENALTY ON US BECAUSE HE DID VIOLATE SECTION 48 OF THE LABOUR RELATIONS ACT R.S.O. 1960 C202 S48 WHEN HE DID SUPPORT A MEMBER OF A TRADE UNION TO ARRIVE AT THE DECISION TO DISMISS OUR COMPLAINT.

THE ENCLOSED LETTER FROM MR. MARKOVITCH, EXECUTIVE ASSISTANT TO THE DEPUTY MINISTER OF LABOUR, ADVISES US THAT THE MATTER REFERRED TO IS REVIEWABLE ONLY BY A HIGHER TRIBUNAL, I.E., BY AN APPEAL TO THE COURTS.

4. THIS APPLICATION APPEARS TO BE AN ATTEMPT BY THE APPLICANTS TO HAVE THE EARLIER DECISION OF THE BOARD, REFERRED TO IN PARAGRAPH 4 OF THE APPLICATION, REVIEWED BY A MAGISTRATE. IT IS QUITE CLEAR THAT A MAGISTRATE HAS NO JURISDICTION TO REVIEW A DECISION OF THE BOARD. THIS MAY ONLY BE DONE BY THE HIGH COURT OF JUSTICE IN ONTARIO, AND, IF WE ARE CORRECT IN OUR ASSUMPTION THAT THIS IS AN ATTEMPT TO OBTAIN A REVIEW OF THE EARLIER DECISION, THEN THE APPLICANTS HAVE TAKEN THE WRONG COURSE OF ACTION IN THIS APPLICATION.

5. IF, ON THE OTHER HAND, WE ARE TO REGARD THIS AS AN ORDINARY APPLICATION FOR LEAVE TO PROSECUTE, THEN THE REASONING SET OUT IN THE BOARD'S DECISION IN JAMES SPEIRS V. F. W. MURRAY, DATED MAY 16TH, 1968, BOARD FILE NO. 14570-68-U, IS APPLICABLE TO THE INSTANT CASE. IN OTHER WORDS, THIS BOARD HAS NO JURISDICTION TO SIT IN JUDGMENT ON THE CONDUCT OF A BOARD MEMBER IN THE EXERCISE OF HIS FUNCTIONS UNDER THE LABOUR RELATIONS ACT.

6. FOR THE ABOVE REASONS THE BOARD FINDS THAT THE APPLICANTS HAVE FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO THE PROVISIONS OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE APPLICATION IS HEREBY DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

14204-67-U: JOHN BALZER (COMPLAINANT) V. GENERAL TRUCK DRIVERS UNION - LOCAL 879 AND KNIPFEL CARTAGE COMPANY LIMITED AND THIBODEAU EXPRESS LIMITED (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: RICHARD J. HOBSON AND JOHN BALZER FOR THE COMPLAINANT; T. ARMSTRONG AND R. TAGGART FOR THE RESPONDENT GENERAL TRUCK DRIVERS UNION - LOCAL 879; AND NO ONE APPEARING FOR THE RESPONDENTS KNIPFEL CARTAGE COMPANY LIMITED AND THIBODEAU EXPRESS LIMITED.

DECISION OF THE BOARD: JUNE 3, 1968.

1. HAVING REGARD TO THE REPRESENTATIONS OF THE COMPLAINANT, THIBODEAU EXPRESS LIMITED IS ADDED AS A PARTY RESPONDENT TO THIS COMPLAINT.

2. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT THAT THE COMPLAINANT HAS BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SUBSECTION 2 OF SECTION 35 OF THE LABOUR RELATIONS ACT. SUBSECTION 2 PROVIDES AS FOLLOWS:

(2) NO EMPLOYER SHALL DISCHARGE AN EMPLOYER,

- (A) WHO HAS BEEN EXPELLED OR SUSPENDED FROM MEMBERSHIP IN THE TRADE UNION MENTIONED IN CLAUSE A OF SUBSECTION 1; OR
- (B) TO OR FROM WHOM MEMBERSHIP IN THE TRADE UNION MENTIONED IN CLAUSE A OF SUBSECTION 1 HAS BEEN DENIED OR WITHHELD,

BECAUSE HE WAS OR IS A MEMBER IN ANOTHER TRADE UNION OR HAS ENGAGED IN ACTIVITY AGAINST THE TRADE UNION MENTIONED IN CLAUSE A OF SUBSECTION 1 OR ON BEHALF OF ANOTHER TRADE UNION.

3. THE COMPLAINT ALLEGES IN PARAGRAPH 3 THAT:

ON OR ABOUT THE 11TH DAY OF SEPTEMBER THE AGGRIEVED PERSON WAS DEALT WITH BY AL WILSON, ALVIN GINGERICH AND OTHER REPRESENTATIVES OF THE RESPONDENT UNION CONTRARY TO THE PROVISIONS OF SECTION 35(2) OF THE LABOUR RELATIONS ACT IN THAT THEY DID ON BEHALF OF THE RESPONDENT: TERMINATE HIS MEMBERSHIP IN LOCAL 879 OF THE GENERAL TRUCK DRIVERS UNION THEREBY CAUSING HIM TO LOSE HIS EMPLOYMENT WITH KNIPFEL TRANSPORT OF KITCHENER WHERE HE HAD BEEN EMPLOYED FOR MANY YEARS.

PARAGRAPH 5 OF THE COMPLAINT READS AS FOLLOWS:

5. OTHER RELEVANT STATEMENTS: ALTHOUGH THE RESPONDENT HAS INDICATED THAT THE TERMINATION OF MEMBERSHIP IN THE UNION RESULTED FROM A BREACH OF ARTICLE 2.2 OF THE COLLECTIVE AGREEMENT, REPRESENTATIVES OF THE RESPONDENT HAVE INDICATED TO ME ON OTHER OCCASIONS THAT THE REAL REASON FOR THE TERMINATION HAS TO DO WITH A PERSONALITY CONFLICT BETWEEN MYSELF AND THE SHOP STEWARD. PART OF THESE DIFFICULTIES ARE DUE TO THE FACT THAT THERE IS NO STEWARD ON THE JOB AT KNIPFEL TRANSPORT AND THE STEWARD HAS AN UNLISTED TELEPHONE NUMBER, THEREBY MAKING IT DIFFICULT FOR ME TO COMMUNICATE WITH THE EXECUTIVE OF THE UNION TO IRON OUT PROBLEMS THAT DO ARISE.

4. THE BOARD APPOINTED A FIELD OFFICER IN THIS MATTER WHO SUBSEQUENTLY SUBMITTED HIS REPORT TO THE BOARD, INCLUDING AN UNSIGNED STATEMENT FROM THE COMPLAINANT. AFTER CONSIDERING THE COMPLAINT AND THE

REPORT OF THE FIELD OFFICER, THE BOARD DIRECTED THAT THE MATTER BE LISTED FOR HEARING FOR THE PURPOSE OF GIVING THE COMPLAINANT AN OPPORTUNITY TO SHOW CAUSE WHY THE BOARD SHOULD MAKE FURTHER INQUIRY INTO THE COMPLAINT. AT THE HEARING THE COMPLAINANT WAS REPRESENTED BY COUNSEL WHO HAS IN FACT REPRESENTED THE COMPLAINANT THROUGHOUT ALL THESE PROCEEDINGS. COUNSEL ALSO APPEARED ON BEHALF OF THE RESPONDENT UNION, BUT THE RESPONDENT EMPLOYERS WERE NOT REPRESENTED.

5. AT THE HEARING COUNSEL FOR THE COMPLAINANT WAS SUPPLIED WITH A COPY OF THE STATEMENT OBTAINED FROM THE COMPLAINANT BY THE FIELD OFFICER AND WAS THEN ASKED FOR HIS SUBMISSIONS AS TO WHY THE BOARD SHOULD PROCEED FURTHER WITH THE COMPLAINT, HAVING REGARD TO THE FACT THAT NEITHER THE COMPLAINT ITSELF NOR THE REPORT OF THE FIELD OFFICER CONTAINED ANY MATERIALS WHICH APPEARED TO BRING THE COMPLAINT WITHIN THE PROVISIONS OF SUBSECTION 2 OF SECTION 35. MORE SPECIFICALLY, IT WAS SUGGESTED TO COUNSEL THAT THERE WAS NOTHING IN THESE DOCUMENTS WHICH IN ANY WAY SUGGESTED THAT THE COMPLAINANT WAS EXPELLED OR SUSPENDED FROM MEMBERSHIP BECAUSE HE WAS OR IS A MEMBER IN ANOTHER TRADE UNION OR HAS ENGAGED IN ACTIVITY AGAINST THE RESPONDENT TRADE UNION WITHIN THE MEANING OF THOSE WORDS IN SUBSECTION 2 AS CONSTRUED BY THE BOARD IN THE MCANALLY FREIGHT-WAYS CASE, 64 (3) C.L.L.C. PAR. 16,011.

6. AT THIS POINT COUNSEL FOR THE COMPLAINANT REFERRED TO CERTAIN MATTERS WHICH HE ALLEGED HAD TAKEN PLACE SOME TIME AGO AND WITH WHICH, INCIDENTALLY, HE HAD BEEN PREVIOUSLY INVOLVED. THESE MATTERS, HE ARGUED, WERE THE CAUSE OF THE ALLEGED PERSONALITY CONFLICT BETWEEN THE COMPLAINANT AND THE SHOP STEWARD REFERRED TO IN PARAGRAPH 5 OF THE COMPLAINT, SUPRA. COUNSEL FURTHER SUBMITTED THAT IT WAS DIFFICULT TO GET INSTRUCTIONS FROM HIS CLIENT AND THAT THE COMPLAINANT OUGHT NOT TO BE PENALIZED BECAUSE OF HIS INABILITY TO COMMUNICATE. ON THIS LATTER POINT WE WOULD MERELY OBSERVE THAT THE COMPLAINT WAS FILED BY THE COMPLAINANT'S COUNSEL, WHO, ON HIS OWN ADMISSION, WAS INVOLVED IN THE MATTERS WHICH HE NOW SUBMITS FORM THE FOUNDATION FOR THE PRESENT COMPLAINT.

7. IN HAYES-DANA LIMITED, BOARD FILE NO. 14191-67-U (APRIL 1968), THE BOARD REFERRED TO THE FACT THAT DOCUMENTS FILED BY PARTIES IN SECTION 65 CASES WERE NOT CONSTRUED BY THE BOARD WITH THE SAME STRICTNESS AS PLEADINGS IN A COURT OF LAW. IN THAT CASE THE BOARD DID NOT APPOINT A FIELD OFFICER BUT, INSTEAD, HAD THE MATTER LISTED FOR HEARING ON THE MERITS. THE RESPONDENT OBJECTED THAT THE COMPLAINT, TOGETHER WITH THE PARTICULARS FILED IN SUPPORT THEREOF, DID NOT REVEAL A CAUSE OF ACTION. THE BOARD HELD THAT THE COMPLAINT WAS SUFFICIENTLY BROAD TO WARRANT THE CONSTRUCTION PUT ON IT BY THE COMPLAINANT. IN THE PRESENT CASE THE BOARD WAS UNABLE TO FIND IN THE COMPLAINT OR IN THE REPORT OF THE FIELD OFFICER ANY MATERIAL WHICH WOULD BRING THE COMPLAINT UNDER SECTION 35(2) OF THE ACT. ASSUMING THAT THE MATTERS REFERRED TO BY COUNSEL WOULD HAVE WARRANTED THE BOARD LISTING

THE MATTER FOR FURTHER INQUIRY, PROVIDED THEY HAD BEEN BROUGHT OUT IN THE COMPLAINT AND THE REPORT OF THE FIELD OFFICER, WE ARE UNABLE TO FIND THAT THERE IS ANYTHING IN THE COMPLAINT OR THE REPORT OF THE FIELD OFFICER WHICH IS BROAD ENOUGH TO REFER TO OR TO INCLUDE THESE OTHER MATTERS. IN OTHER WORDS, WE AGREE WITH COUNSEL FOR THE RESPONDENT UNION THAT WHAT THE COMPLAINANT IS NOW SEEKING TO DO IS TO PROCEED WITH WHAT IS IN EFFECT A NEW COMPLAINT. THIS COMPLAINT HAS NOT BEEN INVESTIGATED BY THE FIELD OFFICER AND WOULD HAVE TO BE SO INVESTIGATED BEFORE THE BOARD WOULD HAVE JURISDICTION TO INQUIRE FURTHER INTO IT.

8. ALTHOUGH COUNSEL FOR THE COMPLAINANT HAS SUGGESTED THAT THE MATTER MIGHT BE CURED BY PERMITTING HIM TO AMEND THE COMPLAINT, IN ALL THE CIRCUMSTANCES, WE HAVE COME TO THE CONCLUSION THAT THE COMPLAINT OUGHT TO BE DISMISSED. SUCH DISMISSAL WOULD NOT PRECLUDE THE COMPLAINANT FROM FILING A NEW COMPLAINT IF HE THOUGHT IT ADVISABLE TO DO SO.

9. IN THE RESULT, THEREFORE, THE COMPLAINT IS DISMISSED.

14318-67-U: THE LUMBER & SAWMILL WORKERS' UNION LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA-A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. KOKOTOW LUMBER LIMITED, (SAWMILL OPERATIONS KENOGAMI) (RESPONDENT).

- AND -

14521-68-U: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, A.F.L.-C.I.O.-C.L.C. (COMPLAINANT) V. KOKOTOW LUMBER SAWMILL (KENOGAMI SAWMILL). (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: T. G. HARKNESS FOR THE APPLICANT AND R. D. PERKINS, I KOKOTOW FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 5, 1968.

1. THIS IS AN APPLICATION FOR RELIEF MADE PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS, CHARLES FRAPPIER, RAYMOND FRAPPIER, ROBERT FRAPPIER, DONALD GAUTHIER AND LEO GIRARD WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 48, 50(A), 50(B), 50(C) OF THE ACT AND REQUESTS THEIR REINSTATEMENT TO EMPLOYMENT WITH THE RESPONDENT WITHOUT LOSS OF PAY. THE RESPONDENT DENIES THE CLAIM AND SUBMITS THAT THE APPLICATION SHOULD BE DISMISSED.

2. IN CASES OF THIS NATURE, THE APPLICANT HAS A PRIMARY ONUS TO SATISFY THE BOARD BY SUBSTANTIAL CREDIBLE EVIDENCE THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE ACT. THERE WAS NO EVIDENCE WHATSOEVER PRESENTED TO THE BOARD WITH RESPECT TO THE CLAIM OF DONALD GAUTHIER. THERE IS SOME CIRCUMSTANTIAL EVIDENCE SUPPORTING THE COMPLAINANT'S CASE WITH RESPECT TO THE OTHER AGGRIEVED PERSONS BUT THERE IS NOT SUFFICIENT EVIDENCE ON THE BALANCE OF PROBABILITIES THAT THE RESPONDENTS' ACTIONS IN THIS MATTER WERE CONTRARY TO THE ACT.

3. HAVING REGARD, THEREFORE, TO ALL THE EVIDENCE AND THE ARGUMENTS PRESENTED TO THE BOARD IN THIS MATTER, WE FIND THAT THE COMPLAINANT DID NOT MEET THE ONUS ON IT TO ESTABLISH THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 48, 50(A), 50(B) AND 50(C).

4. ACCORDINGLY, THE APPLICATION IS DISMISSED.

14396-67-U: MRS. MARY ANN WORTLEY (COMPLAINANT) V. HIRAM WALKER AND SONS LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: SAULT NOSANCHUK, ROBERT J. DUPUIS AND MRS. MARY ANN WORTLEY FOR THE COMPLAINANT, RICHARD KIPPEN, ANDREW SZABO AND EDWIN WAKELEY FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 19, 1968.

1. THIS IS A COMPLAINT PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT WAS AT ALL RELEVANT TIMES A MEMBER OF THE BARGAINING UNIT REPRESENTED BY LOCAL 61 OF THE DISTILLERY WORKERS' UNION.

2. THE RESPONDENT ALSO EMPLOYS OFFICE EMPLOYEES WHO ARE NOT COVERED BY THE COLLECTIVE AGREEMENT.

3. ONE OF THE PROVISIONS OF THE COLLECTIVE AGREEMENT BINDING UPON THE COMPLAINANT READS AS FOLLOWS:

ARTICLE 27.

MARRIED WOMEN WORKING.

UNTIL FURTHER NOTICE FROM THE EMPLOYER A MARRIED WOMAN WILL BE ALLOWED TO WORK FOR ONE (1) YEAR AFTER THE DATE OF MARRIAGE OR UNTIL SHE BECOMES THREE (3) MONTHS PREGNANT, WHICHEVER

DATE OCCURS EARLIER, SUBJECT TO THE USUAL RULES
RE LAY-OFFS, DISCHARGES, ETC.

ANY FEMALE EMPLOYEE WHO GETS MARRIED WILL BE
REQUIRED TO REPORT HER MARRIAGE DATE TO THE BOTTLING
SUPERINTENDENT AND ANYONE FAILING SO TO REPORT WILL
BE SUBJECT TO DISCHARGE FOR INFRACTION OF EMPLOYMENT
RULES.

4. THE PARTIES AGREED THAT THE FEMALE OFFICE EMPLOYEES WHO ARE
MARRIED ARE NOT REQUIRED TO DISCONTINUE THEIR EMPLOYMENT AFTER ONE
YEAR NOR ARE THEY REQUIRED TO DISCONTINUE THEIR EMPLOYMENT AFTER BEING
THREE MONTHS PREGNANT.

5. IT IS THE COMPLAINANT'S POSITION THAT THE RESPONDENT HAD
DISCRIMINATED AGAINST THE COMPLAINANT BY ENFORCING THE PROVISIONS OF
ARTICLE 27 OF THE COLLECTIVE AGREEMENT AND TERMINATING HER EMPLOYMENT.
IT IS THE COMPLAINANT'S POSITION THAT THIS DISCRIMINATION IS CAUSED BY
HER UNION MEMBERSHIP SINCE NO SUCH RESTRICTIONS ARE PLACED ON NON-UNION
FEMALE OFFICE EMPLOYEES.

6. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF
THE PARTIES, THE BOARD FINDS THAT IT IS THE COMPLAINANT'S MEMBERSHIP
IN THE BARGAINING UNIT RATHER THAN MEMBERSHIP IN THE TRADE UNION WHICH
IS THE SOURCE OF HER COMPLAINT IN THIS MATTER. THERE IS NOTHING IN
THE LABOUR RELATIONS ACT WHICH WOULD PREVENT THE EMPLOYER AND THE UNION
FROM NEGOTIATING THE PROVISIONS CONTAINED IN ARTICLE 27 OF THE COLLEC-
TIVE AGREEMENT. WHERE A UNION AND A COMPANY HAVE NEGOTIATED A TERM IN
A COLLECTIVE AGREEMENT, THE COMPANY CANNOT BE SAID TO BE DISCRIMINATING
AGAINST AN EMPLOYEE IN THE BARGAINING UNIT WHEN THE COMPANY RELIES UPON
AND UNIFORMLY ENFORCES THE SPECIFIC PROVISIONS OF THE COLLECTIVE AGREE-
MENT. IF THE RESPONDENT TERMINATES THE EMPLOYMENT OF A FEMALE EMPLOYEE
IN THE BARGAINING UNIT AFTER THE PERIOD OF ONE YEAR HAS ELAPSED FOLLOW-
ING THE EMPLOYEE'S MARRIAGE, SUCH ACTION ON THE PART OF THE RESPONDENT
IS NO MORE DISCRIMINATORY THAN WHEN THE EMPLOYER ENFORCES OTHER PROVIS-
IONS OF THE COLLECTIVE AGREEMENT, EVEN THOUGH SUCH PROVISIONS ARE NOT
APPLICABLE TO THE OFFICE STAFF.

7. SINCE THE APPLICANT HAS FAILED TO ESTABLISH THAT THE PROVISIONS
OF ARTICLE 27, REFERRED TO ABOVE, ARE IN VIOLATION OF ANY PROVISIONS OF
THE LABOUR RELATIONS ACT, THE BOARD THEREFORE FINDS THAT THE COMPLAIN-
AND HAS FAILED TO SATISFY THE ONUS ON HER THAT SHE HAS BEEN DISMISSED
CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

8. THE COMPLAINT IS THEREFORE DISMISSED.

14464-68-U: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, (AFL, CIO, CLC.) (COMPLAINANT) V. BRACEBRIDGE STEEL FABRICATING COMPANY, A DIVISION OF WILSON ENGINEERING AND FABRICATING LIMITED, WINONA, ONTARIO (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: DICK VAN GYZEN, ALLAN COCHRANE FOR THE COMPLAINANT, AND A. R. BLACK FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 13, 1968.

1. THIS IS AN APPLICATION FOR RELIEF MADE PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS ERIC SANTOWSKI, LYLE LOSHAW, HARVEY WILLIAM DADSON, LEON LOSHAW, CARL MARKLE AND ROBERT MARKLE WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 3 AND 50 OF THE LABOUR RELATIONS ACT AND REQUESTS THEIR REINSTATEMENT TO EMPLOYMENT WITH THE RESPONDENT WITHOUT LOSS OF PAY. THE RESPONDENT DENIES THE CLAIM.

2. NONE OF THE AGGRIEVED PERSONS TESTIFIED IN THIS MATTER, THEREFORE, THE BOARD, HAVING NO EVIDENCE BEFORE IT OF LOSS INCURRED BY ANY OF THE AGGRIEVED PERSONS COULD NOT DEAL WITH THE MATTER OF COMPENSATION IN ANY EVENT. THE REPRESENTATIVE OF THE COMPLAINANT DID OFFER SOME EVIDENCE REGARDING THE CIRCUMSTANCES SURROUNDING THE COMPLAINT AND AS WELL THE RESPONDENT BY THE TESTIMONY OF MR. RONALD WILSON TENDERED EVIDENCE IN REPLY THERETO. THERE IS NOT, HOWEVER, SUFFICIENT EVIDENCE BEFORE US ON THE BALANCE OF PROBABILITIES THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE ACT AS ALLEGED BY THE COMPLAINANT.

3. HAVING REGARD, THEREFORE, TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE COMPLAINANT DID NOT MEET THE ONUS ON IT TO ESTABLISH THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 3 AND 50 OF THE ACT.

4. THE APPLICATION IS ACCORDINGLY DISMISSED.

14480-68-U: SHOPMEN'S LOCAL UNION No. 757 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, (AFL, CIO, CLC) (COMPLAINANT) V. BRACEBRIDGE STEEL FABRICATING COMPANY, A DIVISION OF WILSON ENGINEERING AND FABRICATING, LIMITED, WINONA, ONTARIO (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: JUNE 13, 1968.

1. THIS IS AN APPLICATION FOR RELIEF MADE PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS THOMAS SWORD, ALFRED FERRIER, WILBERT BETHUNE, GENE NEWALL AND CHARLES FORTH WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 3 AND 50 OF THE LABOUR RELATIONS ACT AND REQUESTS THEIR REINSTATEMENT TO EMPLOYMENT WITH THE RESPONDENT WITHOUT LOSS OF PAY. THE RESPONDENT DENIES THE CLAIM.

2. NONE OF THE AGGRIEVED PERSONS TESTIFIED IN THIS MATTER, THEREFORE, THE BOARD, HAVING NO EVIDENCE BEFORE IT OF LOSS INCURRED BY ANY OF THE AGGRIEVED PERSONS COULD NOT DEAL WITH THE MATTER OF COMPENSATION IN ANY EVENT. THE REPRESENTATIVE OF THE COMPLAINANT DID OFFER SOME EVIDENCE REGARDING THE CIRCUMSTANCES SURROUNDING THE COMPLAINT AND AS WELL THE RESPONDENT BY THE TESTIMONY OF MR. RONALD WILSON TENDERED EVIDENCE IN REPLY THERETO. THERE IS NOT, HOWEVER, SUFFICIENT EVIDENCE BEFORE US ON THE BALANCE OF PROBABILITIES THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE ACT AS ALLEGED BY THE COMPLAINANT.

3. HAVING REGARD, THEREFORE, TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE COMPLAINANT DID NOT MEET THE ONUS ON IT TO ESTABLISH THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 3 AND 50 OF THE ACT.

4. THE APPLICATION IS ACCORDINGLY DISMISSED.

14540-68-U: AMALGAMATED CLOTHING WORKERS OF AMERICA, CLC AFL-CIO
(COMPLAINANT) V. NEWTEX LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE
AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: G. CHARNEY, JOE SUTTON AND STAN CLAIR
FOR THE COMPLAINANT, A. A. MORSCHER AND W. E. RENAUD FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 26, 1968.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGED THAT "ON OR ABOUT 19TH APRIL, 1968 THE AGGRIEVED PERSON WAS DEALT WITH BY BOB MAHN SUPERVISOR OF THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50A AND 59A (1)(A) OF THE LABOUR RELATIONS ACT, IN THAT HE DID ON BEHALF OF THE RESPONDENT: DISCHARGE THE AGGRIEVED PERSON. THE COMPLAINANT ALLEGES THAT NANCY HERMAN WAS DISCHARGED AS A DIRECT RESULT OF GIVING EVIDENCE ON BEHALF OF THE UNION (COMPLAINANT) IN AN APPLICATION FOR CERTIFICATION HEARING ON THE 10TH DAY OF APRIL, 1968.

2. MRS. HERMAN WAS DISCHARGED FOLLOWING HER APPEARANCE AS A WITNESS FOR THE UNION IN ANOTHER PROCEEDING BEFORE THE BOARD, HOWEVER, THE RESPONDENT IN THIS CASE ESTABLISHED THROUGH ITS WITNESSES A REASONABLE AND SATISFACTORY EXPLANATION AS TO THE REAL CAUSE FOR THE DISCHARGE OF MRS. HERMAN.

3. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE COMPLAINANT HAS FAILED TO SATISFY THE ONUS ON IT THAT MRS. NANCY HERMAN WAS DISCHARGED BY THE RESPONDENT FOR REASONS CONTRARY TO THE PROVISIONS OF SECTIONS 50(A) AND 59A(1)(A) RATHER THAN FOR JUST CAUSE FOR THE REASONS ESTABLISHED BY THE RESPONDENT.

4. THE COMPLAINT IS THEREFORE DISMISSED.

INDEXED ENDORSEMENTS - SECTION 33(2)

14681-68-M: LIVINGSTON INDUSTRIES LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: JUNE 20, 1968.

1. THIS IS AN APPLICATION UNDER SECTION 33(2) OF THE LABOUR RELATIONS ACT TO HAVE A "NO STRIKE - NO LOCK-OUT" CLAUSE ADDED TO THE COLLECTIVE AGREEMENT PRESENTLY IN OPERATION BETWEEN THE PARTIES AND COVERING EMPLOYEES OF THE APPLICANT AT ITS HAGERSVILLE PLANT IN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT. THE AGREEMENT IN QUESTION BECAME EFFECTIVE ON NOVEMBER 1, 1966 AND REMAINS IN EFFECT UNTIL OCTOBER 31, 1969.

2. SECTION 33 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

33.-(1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE THAT THERE WILL BE NO STRIKES OR LOCK-OUTS SO LONG AS THE AGREEMENT CONTINUES TO OPERATE.

(2) IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION 1, IT MAY BE ADDED TO THE AGREEMENT AT ANY TIME BY THE BOARD UPON THE APPLICATION OF EITHER PARTY.

3. IT IS CLEAR THAT THE AGREEMENT BETWEEN THE PARTIES, A COPY OF WHICH WAS FILED WITH THE APPLICATION, DOES NOT CONTAIN THE CLAUSE EN-
VISAGED BY SUBSECTION 1 OF SECTION 33. ALTHOUGH THE RESPONDENT TRADE UNION WAS SERVED WITH NOTICE OF THE APPLICATION AND INVITED TO MAKE COMMENTS WITH RESPECT THERETO ON OR BEFORE JUNE 17, 1968, IT HAS FAILED TO FILE WITH THE BOARD ANY WRITTEN REPRESENTATIONS.

4. THE AGREEMENT IN QUESTION ENTERED INTO ON NOVEMBER 1, 1966 IS BETWEEN LIVINGSTON WOOD MANUFACTURING LIMITED AND INTERNATIONAL WOODWORKERS OF AMERICA. THE BOARD IS SATISFIED THAT LIVINGSTON WOOD MANUFACTURING LIMITED IS THE SAME ENTITY AS THE APPLICANT IN THIS PROCEEDING, A CHANGE IN NAME ONLY HAVING TAKEN PLACE ON APRIL 17TH, 1967.

5. THE BOARD IS SATISFIED THAT THE APPLICANT IS ENTITLED TO THE RELIEF SOUGHT. THE FOLLOWING PROVISION IS THEREFORE ADDED TO THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES EFFECTIVE FORTHWITH:

THERE SHALL BE NO STRIKES OR LOCK-OUTS
SO LONG AS THIS AGREEMENT CONTINUES TO
OPERATE.

14682-68-M: LIVINGSTON INDUSTRIES LIMITED (APPLICANT) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF THE BOARD: JUNE 20, 1968.

1. THIS IS AN APPLICATION UNDER SECTION 33(2) OF THE LABOUR RELATIONS ACT TO HAVE A "NO STRIKE - NO LOCK-OUT" CLAUSE ADDED TO THE COLLECTIVE AGREEMENT PRESENTLY IN OPERATION BETWEEN THE PARTIES AND COVERING EMPLOYEES OF THE APPLICANT AT REXDALE IN THE BARGAINING UNIT DEFINED IN THE COLLECTIVE AGREEMENT. THE AGREEMENT IN QUESTION BECAME EFFECTIVE ON SEPTEMBER 16, 1966 AND REMAINS IN EFFECT UNTIL SEPTEMBER 15, 1968.

2. SECTION 33 OF THE LABOUR RELATIONS ACT PROVIDES AS FOLLOWS:

33.--(1) EVERY COLLECTIVE AGREEMENT SHALL PROVIDE THAT THERE WILL BE NO STRIKES OR LOCK-OUTS SO LONG AS THE AGREEMENT CONTINUES TO OPERATE.

(2) IF A COLLECTIVE AGREEMENT DOES NOT CONTAIN SUCH A PROVISION AS IS MENTIONED IN SUBSECTION 1, IT MAY BE ADDED TO THE AGREEMENT AT ANY TIME BY THE BOARD UPON THE APPLICATION OF EITHER PARTY.

3. IT IS CLEAR THAT THE AGREEMENT BETWEEN THE PARTIES, A COPY OF WHICH WAS FILED WITH THE APPLICATION, DOES NOT CONTAIN THE CLAUSE EN-VISAGED BY SUBSECTION 1 OF SECTION 33. ALTHOUGH THE RESPONDENT TRADE UNION WAS SERVED WITH NOTICE OF THE APPLICATION AND INVITED TO MAKE COMMENTS WITH RESPECT THERETO ON OR BEFORE JUNE 17, 1968, IT HAS FAILED TO FILE WITH THE BOARD ANY WRITTEN REPRESENTATIONS.

4. THE AGREEMENT IN QUESTION ENTERED INTO ON SEPTEMBER 16, 1966 IS BETWEEN PERSISTA DIVISION OF LIVINGSTON WOOD MANUFACTURING LIMITED AND INTERNATIONAL WOODWORKERS OF AMERICA. THE BOARD IS SATISFIED THAT LIVINGSTON WOOD MANUFACTURING LIMITED IS THE SAME ENTITY AS THE APPLI-CANT IN THIS PROCEEDING, A CHANGE IN NAME ONLY HAVING TAKEN PLACE ON APRIL 17TH, 1967.

5. THE BOARD IS SATISFIED THAT THE APPLICANT IS ENTITLED TO THE RELIEF SOUGHT. THE FOLLOWING PROVISION IS THEREFORE ADDED TO THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES EFFECTIVE FORTHWITH:

THERE SHALL BE NO STRIKES OR LOCK-OUTS
SO LONG AS THIS AGREEMENT CONTINUES TO
OPERATE.

INDEXED ENDORSEMENT - SECTION 34(3)

14487-68-M: YORK GEARS LIMITED (APPLICANT) V. THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

APPEARANCES AT THE HEARING: JOHN P. SANDERSON, R. COOPER FOR THE APPLICANT, T. E. ARMSTRONG, B. LISMORE, M. D'ANGELIS, G. RIVETT FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 18, 1968.

1. THE APPLICANT REQUESTS THE BOARD TO MODIFY THE ARBITRATION PROVISION SET OUT IN A SUBSISTING COLLECTIVE AGREEMENT DATED OCTOBER 24TH, 1965 BETWEEN THE APPLICANT AND THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 34(3) OF THE LABOUR RELATIONS ACT.

2. THE CLAUSES OF THE COLLECTIVE AGREEMENT WHICH ARE RELEVANT TO THE ISSUES IN THIS MATTER ARE AS FOLLOWS:

CLAUSE 12.01. IF ARBITRATION IS TO BE INVOKED, THE REQUEST FOR ARBITRATION MUST BE MADE IN WRITING BY EITHER PARTY REQUESTING THE SAME WITHIN FOUR (4) WORKING DAYS AFTER THE DELIVERY OF THE DECISION FOLLOWING THE FINAL STEP OF THE GRIEVANCE PROCEDURE.

CLAUSE 12.02. IT IS AGREED THAT GRIEVANCES AT THE ARBITRATION STAGE WILL BE PROCESSED ON AN ALTERNATING BASIS, USING FIRST AN ARBITRATION BOARD AND THEN A SINGLE ARBITRATOR.

CLAUSE 12.03. A PANEL OF THREE (3) ARBITRATORS WILL BE SET UP BY MUTUAL AGREEMENT ONE (1) OF WHOM WILL ACT, TO PROCESS GRIEVANCES HEARD BEFORE A SINGLE ARBITRATOR, WHOSE DECISION SHALL BE FINAL AND BINDING ON BOTH PARTIES. THE PARTIES WILL JOINTLY BEAR THE EXPENSE OF SUCH ARBITRATOR.

CLAUSE 12.04. IN THE CASE OF HEARINGS BEFORE AN ARBITRATION BOARD, THE PARTIES TO THIS AGREEMENT SHALL EACH NOMINATE AN ARBITRATOR. THE TWO (2) ARBITRATORS SO NOMINATED SHALL MEET IMMEDIATELY AND IF THEY FAIL TO SETTLE THE GRIEVANCE WITHIN FIVE (5) WORKING DAYS OF THEIR APPOINTMENT, THEY SHALL ATTEMPT TO SELECT, BY AGREEMENT, A CHAIRMAN OF AN ARBITRATION BOARD. IF THEY ARE UNABLE TO AGREE UPON A CHAIRMAN WITHIN A FURTHER PERIOD OF SEVEN (7) WORKING DAYS, THEY WILL THEN REQUEST THE MINISTER OF LABOUR FOR THE PROVINCE OF ONTARIO TO APPOINT AN IMPARTIAL CHAIRMAN.

3. THE APPLICANT SUBMITTED THAT THOSE PORTIONS OF ARTICLE 12 DEALING WITH THE PROVISION FOR A SINGLE ARBITRATOR DO NOT CONFORM TO THE CONCEPT OF ARBITRATION AS EMBODIED IN SECTION 34(2) OF THE ACT AND THEY SHOULD BE STRUCK OUT OF THE AGREEMENT. ALTERNATIVELY, SECTION 12.02 IS UNCLEAR AND UNWORKABLE AS THE PARTIES DO NOT KNOW WHAT IS THE STARTING POINT NOR WHAT IS MEANT BY "PROCESSED". IT IS SUGGESTED THAT THIS CLAUSE BE MODIFIED SO THAT THE PARTY TAKING THE MATTER TO ARBITRATION MUST ADVISE THE OTHER PARTY

OF THE METHOD OF ARBITRATION BEING SOUGHT. THE APPLICANT FURTHER SUBMITTED THAT ARTICLE 12.03 IS INADEQUATE AS IF THE THREE MEMBERS OF THE PANEL ARE UNABLE OR UNWILLING TO ACT THERE IS NO ALTERNATIVE SET OUT IN THE AGREEMENT AND IT IS QUESTIONABLE WHETHER THE PROVISIONS OF SECTION 34(4) OF THE ACT COULD APPLY. LASTLY, THE APPLICANT SUBMITTED THAT ARTICLE 12.04 IS INADEQUATE AS THERE ARE NO TIME LIMITS IMPOSED ON THE PARTIES TO APPOINT A NOMINEE TO AN ARBITRATION BOARD. BRIEFLY, THE RESPONDENT ARGUED THAT THE APPROPRIATE TEST FOR THE BOARD TO USE IS THAT ON CONSIDERATION OF THE LANGUAGE USED IN THE AGREEMENT HAD ADEQUATE PROVISION BEEN MADE FOR FINAL AND BINDING SETTLEMENTS WHICH IS CAPABLE OF BEING CONSTRUED. THE BOARD SHOULD ONLY INTERVENE WHERE FRUSTRATION IS INEVITABLE BECAUSE OF AN UNWORKABLE PROVISION. IN THE ABSENCE OF TIME LIMITS IT SUBMITS THAT REASONABLE TIME SHOULD BE SUBSTITUTED ON EACH AND IF UNWARRANTED DELAY OCCURRED, EITHER PARTY COULD PROCEED IN SECTION 34(4) OF THE ACT. IT WAS ALSO POINTED OUT TO THE BOARD THAT THE AGREEMENT ENDED ON AUGUST 31ST, 1968 AND IF THERE IS A LACK OF CLARITY THEN SUCH ISSUES SHOULD BE DEALT WITH BY THE PARTIES IN BARGAINING AND IT WAS SUGGESTED THAT THE BOARD SHOULD TAKE THIS INTO CONSIDERATION.

4. SECTION 34(4) OF THE ACT IS AS FOLLOWS:

NOTWITHSTANDING SUBSECTION 3, IF THERE IS FAILURE TO APPOINT AN ARBITRATOR OR TO CONSTITUTE A BOARD OF ARBITRATION UNDER A COLLECTIVE AGREEMENT, THE MINISTER, UPON THE REQUEST OF EITHER PARTY, MAY APPOINT THE ARBITRATOR OR MAKE SUCH APPOINTMENTS AS ARE NECESSARY TO CONSTITUTE THE BOARD OF ARBITRATION, AS THE CASE MAY BE, AND ANY PERSON SO APPOINTED BY THE MINISTER SHALL BE DEEMED TO HAVE BEEN APPOINTED IN ACCORDANCE WITH THE COLLECTIVE AGREEMENT.

WE FIND THAT THE ARBITRATION PROVISION IN THE COLLECTIVE AGREEMENT SATISFIES THE REQUIREMENTS OF SECTION 34(1) OF THE ACT. THE ISSUES THEN TO BE DETERMINED BY THE BOARD IS WHETHER ANY PART OF THE ARBITRATION PROVISION CONTAINED IN THE COLLECTIVE AGREEMENT BETWEEN THE PARTIES IS INADEQUATE. WE DO NOT AGREE WITH THE APPLICANT THAT THE LEGISLATURE INTENDED THAT THE SETTLEMENT OF DIFFERENCES BETWEEN PARTIES MUST ONLY BE ACHIEVED THROUGH A BOARD OF ARBITRATION. THAT METHOD OF ARBITRATION IS IMPOSED BY THE ACT ONLY WHERE THE PARTIES TO A COLLECTIVE AGREEMENT FAIL TO PROVIDE FOR FINAL AND BINDING SETTLEMENTS BY ARBITRATION CONTRARY TO THE PROVISIONS OF SECTION 34(1) OF THE ACT. THE WORD "ARBITRATION" USED IN SECTION 34(1) LEAVES IT OPEN TO THE PARTIES THEMSELVES TO DETERMINE THE METHOD OF ARBITRATION FOR THE PURPOSES OF A COLLECTIVE AGREEMENT, SO LONG AS WHATEVER METHOD CHOSEN PROVIDES FOR A FINAL AND BINDING SETTLEMENT OF ALL DIFFERENCES.

5. FURTHER, WE FIND THAT CLAUSES 12.01 AND 12.02 ARE CAPABLE OF BEING CONSTRUED AND ARE ADEQUATE IN THE CIRCUMSTANCES. AS SUBMITTED BY THE RESPONDENT, SILENCE ON A MATTER IN A COLLECTIVE AGREEMENT MAY BE QUITE DELIBERATE AND THE BOARD IS THEREFORE CAUTIOUS IN ALTERING ANY PROVISIONS CONTAINED IN AN AGREEMENT WHICH RESULTED THROUGH A BARGAINING PROCESS. WHERE,

HOWEVER, THE BOARD CONSIDERS THAT ANY PART OF AN ARBITRATION PROVISION IN A COLLECTIVE AGREEMENT IS NOT ADEQUATE TO PROVIDE THE RELIEF THAT IS INTENDED THEN THE BOARD SHOULD EXERCISE ITS DISCRETION TO MODIFY SUCH PROVISION.

6. IT IS OUR OPINION THAT IN THE INSTANT CASE THE ARBITRATION PROCEDURE WHETHER BY A SINGLE ARBITRATOR OR BY A BOARD OF ARBITRATION COULD WELL BE FRUSTRATED BY THE LACK OF TIME LIMITS IN THE APPOINTMENT OF AN ARBITRATOR OR THE PARTIES' NOMINEES TO AN ARBITRATION BOARD AS THE CASE MAY BE. WE, THEREFORE, FIND THAT CLAUSES 12.03 AND 12.04 OF THE COLLECTIVE AGREEMENT ARE INADEQUATE TO THIS EXTENT.

7. ACCORDINGLY, WE HEREBY MODIFY THE SAID COLLECTIVE AGREEMENT BETWEEN THE PARTIES AS FOLLOWS:

(A) THE FOLLOWING PROVISION SHALL BE ADDED TO THE SAID COLLECTIVE AGREEMENT AS CLAUSE 12.03A:

IN THE CASE OF HEARINGS BEFORE A SINGLE ARBITRATOR THE PARTY MAKING THE REQUEST FOR ARBITRATION SHALL AT THE TIME THE REQUEST IS MADE NAME AN ARBITRATOR SELECTED FROM THE PANEL OF ARBITRATORS ESTABLISHED PURSUANT TO THE PROVISIONS OF CLAUSE 12.03. SHOULD THE PARTY RECEIVING THE REQUEST FOR ARBITRATION NOT AGREE WITH THE SELECTION OF THE ARBITRATOR SO NAMED AND WITHIN FIVE (5) WORKING DAYS AFTER THAT PARTY RECEIVES THE REQUEST FOR ARBITRATION THE PARTIES FAIL TO AGREE ON ANOTHER ARBITRATOR SELECTED FROM THE PANEL OR ARBITRATORS THEN EITHER PARTY MAY REQUEST THE MINISTER OF LABOUR FOR THE PROVINCE OF ONTARIO TO APPOINT ONE OF THE MEMBERS OF THE PANEL AS ARBITRATOR PROVIDED THAT IF NONE OF THE PANEL OF ARBITRATORS ARE WILLING OR AVAILABLE TO ACT WITHIN A REASONABLE TIME THE MINISTER WILL APPOINT SOME OTHER PERSON TO ACT AS ARBITRATOR.

(B) CLAUSE 12.04 OF THE AGREEMENT SHALL BE DELETED AND THE FOLLOWING SUBSTITUTED THEREFOR:

IN THE CASE OF HEARINGS BEFORE AN ARBITRATION BOARD THE PARTY MAKING A REQUEST FOR ARBITRATION SHALL, AT THE TIME OF MAKING SUCH REQUEST, APPOINT ITS NOMINEE TO THE ARBITRATION BOARD AND THE PARTY RECEIVING THE REQUEST FOR ARBITRATION SHALL WITHIN FIVE (5) WORKING DAYS AFTER RECEIPT OF SUCH REQUEST APPOINT ITS NOMINEE TO THE ARBITRATION BOARD. IF EITHER PARTY FAILS TO APPOINT ITS NOMINEE WITHIN THE TIME ALLOWED THEN THE APPOINTMENT OF THE NOMINEE SHALL BE MADE BY THE MINISTER OF LABOUR FOR THE

PROVINCE OF ONTARIO UPON THE REQUEST OF EITHER PARTY. THE TWO (2) ARBITRATORS SO NOMINATED SHALL MEET IMMEDIATELY AND IF THEY FAIL TO SETTLE THE GRIEVANCE WITHIN FIVE (5) WORKING DAYS OF THEIR APPOINTMENT, THEY SHALL ATTEMPT TO SELECT, BY AGREEMENT, A CHAIRMAN OF AN ARBITRATION BOARD. IF THEY ARE UNABLE TO AGREE UPON A CHAIRMAN WITHIN A PERIOD OF SEVEN (7) WORKING DAYS, THEY WILL THEN REQUEST THE MINISTER OF LABOUR FOR THE PROVINCE OF ONTARIO TO APPOINT AN IMPARTIAL CHAIRMAN.

INDEXED ENDORSEMENT - SECTION 47A

14561-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 157 (APPLICANT)
V. THE BOARD OF HEALTH OF THE WELLAND AND DISTRICT HEALTH UNIT, THE BOARD
OF HEALTH - THE ST. CATHARINES-LINCOLN HEALTH UNIT, THE BOARD OF HEALTH
OF THE NIAGARA DISTRICT HEALTH UNIT (RESPONDENTS) V. GROUP OF EMPLOYEES
(OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN
AND O. HODGES.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, J. BEATTIE, G. PUNNETT
FOR THE APPLICANT AND J. F. SWAYZEM DR. L. W. STURGEON, R. H. BELL
FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 27, 1968.

1. THIS IS AN APPLICATION UNDER SECTION 47A OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT IS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE BOARD OF HEALTH OF THE NIAGARA DISTRICT HEALTH UNIT.
2. THE FACTS IN THIS MATTER ARE NOT IN DISPUTE. THE APPLICANT AND THE BOARD OF HEALTH - THE ST. CATHARINES-LINCOLN HEALTH UNIT WERE PARTIES TO A COLLECTIVE AGREEMENT DATED APRIL 4TH, 1966 EFFECTIVE FOR A PERIOD OF TWO YEARS FROM THAT DATE. ON FEBRUARY 5TH, 1968, THE APPLICANT GAVE NOTICE OF ITS DESIRE TO NEGOTIATE AMENDMENTS TO THE SAID COLLECTIVE AGREEMENT PURSUANT TO ARTICLE 33 OF THE AGREEMENT. BY ORDER-IN-COUNCIL 1259/68 DATED MARCH 21ST, 1968, THE BOARD OF HEALTH - THE ST. CATHARINES-LINCOLN HEALTH UNIT BECAME UNITED WITH THE BOARD OF HEALTH OF THE WELLAND AND DISTRICT HEALTH UNIT UNDER THE NAME OF THE BOARD OF HEALTH OF THE NIAGARA DISTRICT HEALTH UNIT.
3. IN THE CIRCUMSTANCES OF THIS CASE AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES HERETO THE BOARD FINDS THAT THERE HAS BEEN AN AMALGAMATION OF MUNICIPALITIES WITHIN THE MEANING OF SUBSECTION 10 OF SECTION 47A OF THE ACT.
4. THE BOARD DETERMINES THAT THE APPROPRIATE BARGAINING UNIT FOR THE EMPLOYEES AFFECTED BY THIS APPLICATION SHALL CONSTITUTE

ALL OFFICE EMPLOYEES AND PUBLIC HEALTH INSPECTORS OF THE BOARD OF HEALTH OF THE NIAGARA DISTRICT HEALTH UNIT SAVE AND EXCEPT CHIEF INSPECTOR, CHIEF CLERK, PERSONS ABOVE THE RANK OF CHIEF INSPECTOR OR CHIEF CLERK, SECRETARY-TREASURER, PUBLIC HEALTH NURSES, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK.

5. HAVING REGARD TO THE REPRESENTATIONS AND THE AGREEMENT OF THE PARTIES IN THIS MATTER, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE BOARD OF HEALTH OF THE NIAGARA DISTRICT HEALTH UNIT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 4 ABOVE. THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES IN THE SAID BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.
6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.
7. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

14278(A)-67-JD: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 1687 (COMPLAINANT) V. FALCONBRIDGE NICKEL MINES LIMITED AND SUDBURY MINE, MILL AND SMELTER WORKERS' UNION LOCAL 598 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE AND L. POPOVITCH FOR THE COMPLAINANT, N. MACL. ROGERS, Q.C., AND E. R. MATHER FOR THE RESPONDENT COMPANY.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: JUNE 27, 1968.

1. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 66 OF THE LABOUR RELATIONS ACT WITH RESPECT TO A DISPUTE THAT HAD ARISEN OVER AN ASSIGNMENT OF WORK MADE BY THE RESPONDENT COMPANY.
2. THE WORK WHICH IS THE SUBJECT OF THE DISPUTE IS THE INSTALLATION OF ALL ELECTRICAL MOTORS, EQUIPMENT AND APPARATUS AND ALL CONTROLS AND ALL THE WIRING REQUIRED FOR THE OPERATION OF THE MOTORS, EQUIPMENT AND APPARATUS WHICH ARE BEING INSTALLED IN THE RESPONDENT COMPANY'S STRATHCONA MINE CONCENTRATOR PLANT PRESENTLY UNDER CONSTRUCTION AND THE WIRING AND INSTALLATION OF ALL INTERIOR LIGHTING AND POWER OUTLETS IN THE SAID PLANT.

3. THE BACKGROUND HISTORY LEADING UP TO THE INSTANT DISPUTE MAY BE SUMMARIZED AS FOLLOWS. THE RESPONDENT COMPANY CONTRACTED OUT TO BEAMER LATHROP LIMITED THE MECHANICAL AND ELECTRICAL WORK REQUIRED TO BE DONE AT THE RESPONDENT COMPANY'S STRATHCONA MINE MILL COMPLEX IN THE ONAPING AREA. THE MILL COMPLEX INCLUDES THE CONSTRUCTION OF THE CONCENTRATOR PLANT IN QUESTION. BEAMER LATHROP LIMITED HAS A COLLECTIVE BARGAINING RELATIONSHIP WITH THE COMPLAINANT UNION AND COMMENCED WORK UNDER ITS CONTRACT WITH THE RESPONDENT COMPANY IN JUNE OR JULY OF 1966 EMPLOYING MEMBERS OF THE COMPLAINANT. THE CONTRACT BETWEEN THE RESPONDENT COMPANY AND BEAMER LATHROP LIMITED PROVIDED FOR A COMPLETION DATE OF NOT LATER THAN DECEMBER 4TH, 1967 OF THE WORK UNDERTAKEN BY THE LATTER COMPANY. THE ELECTRICAL WORK, IN FACT, WAS NOT COMPLETED BY THE DESIGNATED DATE. THE RESPONDENT COMPANY, HOWEVER, GAVE EXTENSIONS TO BEAMER LATHROP LIMITED FOR THE COMPLETION OF THE ELECTRICAL PORTION OF THE WORK UNTIL MID-FEBRUARY OF 1968.

4. IN ACCORDANCE WITH THE TERMS OF THE CONTRACT BETWEEN BEAMER LATHROP LIMITED AND THE RESPONDENT COMPANY, THE LATTER CANCELLED THE ELECTRICAL PORTION OF THE CONTRACT ON FEBRUARY 23RD, 1968 AND PROCEEDED TO COMPLETE THE ELECTRICAL WORK WITH WHICH WE ARE HERE CONCERNED WITH THE EMPLOYEES IN ITS OWN ELECTRICAL DEPARTMENT. WE WOULD MENTION THAT IN MID-FEBRUARY, BEAMER LATHROP LIMITED WAS EMPLOYING APPROXIMATELY 125 MEMBERS OF THE COMPLAINANT UNION ON THE PROJECT. WHEN THE RESPONDENT COMPANY TOOK OVER THE CONTRACT IT HAD APPROXIMATELY 25 QUALIFIED CONSTRUCTION ELECTRICIANS TO CONTINUE THE JOB. AS A RESULT OF ADVERTISING, AT THE PRESENT TIME THE RESPONDENT COMPANY HAS APPROXIMATELY 50 ELECTRICIANS ON THE JOB. ALL OF THESE EMPLOYEES ARE REPRESENTED BY THE RESPONDENT UNION AND ARE COVERED BY THE CURRENT COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE TWO PARTIES. WHEN THE RESPONDENT COMPANY TOOK OVER THE JOB IT RETAINED ON THE PROJECT TWO SUPERVISORS IN THE EMPLOY OF BEAMER LATHROP LIMITED. THE RESPONDENT COMPANY ALSO RENTED ELECTRICAL TOOLS AND EQUIPMENT FROM BEAMER LATHROP.

5. COUNSEL FOR THE COMPLAINANT UNION FIRST OF ALL SUBMITS THAT IT WAS THE RESPONDENT COMPANY THAT, IN EFFECT, ASSIGNED THE WORK IN DISPUTE TO MEMBERS OF THE COMPLAINANT UNION. COUNSEL FURTHER SUBMITS THAT THE REAL REASON THE RESPONDENT COMPANY TOOK OVER THE CONTRACT FROM BEAMER LATHROP LIMITED AND ASSIGNED THE WORK TO ITS OWN EMPLOYEES WAS TO AVOID THE POSSIBILITY OF A SHUT DOWN OF THE WORK ON THE PROJECT. THE EVIDENCE IS THAT NEGOTIATIONS FOR A NEW COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND BEAMER LATHROP LIMITED, AT THE TIME THE RESPONDENT COMPANY TOOK OVER THE CONTRACT, HAD REACHED A STAGE WHERE THE COMPLAINANT SHORTLY WOULD BE IN A POSITION TO CALL A LAWFUL STRIKE. COUNSEL ARGUES THAT THE TAKING OVER THE CONTRACT BY THE RESPONDENT COMPANY WAS DESIGNED TO APPLY PRESSURE UPON THE COMPLAINANT TO ACCEPT A SETTLEMENT FAVOURABLE TO BEAMER LATHROP LIMITED. COUNSEL SUBMITS THAT TO ALLOW THE RESPONDENT COMPANY TO CONTINUE TO PERFORM THE WORK IN DISPUTE WITH ITS OWN EMPLOYEES IN THESE CIRCUM-

STANCES WOULD AMOUNT TO THE BOARD CONDONING TACTICS WHICH CAN ONLY BE DISRUPTIVE AND GENERALLY HARMFUL TO INDUSTRIAL RELATIONS.

6. IN ADDITION TO THE ABOVE REASON, COUNSEL CLAIMS THAT THE COMPLAINANT'S ESTABLISHED PAST PRACTICE OF DOING THE TYPE OF WORK IN DISPUTE ALSO SUPPORTS ITS CLAIM THAT THE WORK IN DISPUTE SHOULD BE ASSIGNED TO MEMBERS OF THE COMPLAINANT UNION. MOREOVER, COUNSEL ASSERTS THAT THE MEMBERS OF THE COMPLAINANT UNION HAVE SUPERIOR TRAINING AND SKILLS WHICH ENABLE THEM TO CARRY OUT THE WORK MORE EFFICIENTLY THAN THE EMPLOYEES OF THE RESPONDENT COMPANY WHO ARE NOW DOING THE ELECTRICAL WORK IN THE CONCENTRATOR PLANT.

7. DEALING WITH THE FIRST ARGUMENT OF COUNSEL FOR THE COMPLAINANT, WE WOULD POINT OUT THAT THE WORK IN QUESTION WAS CONTRACTED OUT TO BEAMER LATHROP LIMITED. IT WAS BEAMER LATHROP LIMITED AND NOT THE RESPONDENT COMPANY THAT ASSIGNED THE WORK TO MEMBERS OF THE COMPLAINANT UNION UNDER THE TERMS OF ITS COLLECTIVE AGREEMENT WITH THE COMPLAINANT. WE ACCORDINGLY FIND THAT THE RESPONDENT COMPANY IN NO WAY CAN BE SAID TO HAVE ASSIGNED THE WORK IN DISPUTE TO MEMBERS OF THE COMPLAINANT UNION. WITH REGARD TO COUNSEL'S SECOND ARGUMENT, WHATEVER EFFECT THE RESPONDENT COMPANY'S CANCELLATION OF THE ELECTRICAL PORTION OF THE CONTRACT MAY HAVE HAD ON THE NEGOTIATIONS BETWEEN THE COMPLAINANT AND BEAMER LATHROP LIMITED, IT IS NOT A FACTOR WHICH CAN HAVE ANY BEARING IN DETERMINING THE INSTANT WORK ASSIGNMENT DISPUTE. THE BOARD MUST DECIDE THE ISSUE SOLELY ON THE MERITS THAT RELATE DIRECTLY TO THE WORK ASSIGNMENT IN DISPUTE.

8. WE COME NOW TO A CONSIDERATION OF THOSE MERITS. WE DO NOT PROPOSE TO DEAL INDIVIDUALLY OR IN DETAIL IN THIS DECISION WITH THE EVIDENCE GIVEN BY THE WITNESSES CALLED BY THE COMPLAINANT AND THE RESPONDENT COMPANY. ALL OF THE TESTIMONY AND EXHIBITS, HOWEVER, HAVE BEEN CAREFULLY CONSIDERED BY THE BOARD. BASED ON THE EVIDENCE, WE FIND THAT THE TRAINING, KNOWLEDGE AND SKILLS REQUIRED TO PROFICIENTLY DO THE ELECTRICAL INSTALLATION WORK ON THE CONCENTRATOR PLANT AND INDEED THE WHOLE MILL COMPLEX, ALL OF WHICH IS SURFACE INSTALLATION WORK, IS LITTLE DIFFERENT FROM THAT WHICH IS REQUIRED TO DO ELECTRICAL INSTALLATION WORK IN THE CONSTRUCTION OF ANY NEW PLANT OR COMPLEX, BE IT FOR INDUSTRIAL OR COMMERCIAL RATHER THAN FOR MINING PURPOSES. THE ONLY DIFFERENCE OF ANY SUBSTANCE IS THE TYPE OF MACHINERY OR EQUIPMENT TO WHICH THE ELECTRICAL INSTALLATIONS ARE CONNECTED.

9. THE EVIDENCE IS THAT MEMBERS OF THE COMPLAINANT UNION HAVE DONE NEW ELECTRICAL INSTALLATION WORK IN CONCENTRATOR PLANTS AND OTHER TYPES OF SURFACE PLANTS FOR THE RESPONDENT COMPANY AND OTHER MINING COMPANIES IN ONTARIO. WHETHER OR NOT THE MEMBERS OF THE COMPLAINANT UNION HAVE DONE THE WORK HAS DEPENDED UPON WHETHER THE WORK HAS BEEN CONTRACTED OUT TO AN ELECTRICAL CONTRACTOR WHO HAS A COLLECTIVE BARGAINING RELATIONSHIP OR AGREEMENT WITH THE COMPLAINANT UNION. THERE IS NO QUESTION THAT THE EMPLOYEES OF MANY OF THE

ELECTRICAL CONTRACTORS TO WHOM THE RESPONDENT AND OTHER MINING COMPANIES HAVE CONTRACTED OUT NEW ELECTRICAL CONSTRUCTION WORK HAVE BEEN REPRESENTED BY THE COMPLAINANT UNION. IN THESE INSTANCES, OF COURSE, THE WORK IN QUESTION HAS BEEN PERFORMED BY MEMBERS OF THE COMPLAINANT. IN SOME CASES, HOWEVER, THE EMPLOYEES OF THE ELECTRICAL CONTRACTORS TO WHOM NEW ELECTRICAL CONSTRUCTION PROJECTS HAVE BEEN SUBCONTRACTED HAVE NOT BEEN REPRESENTED BY ANY TRADE UNION. IN THESE CIRCUMSTANCES, THE WORK HAS BEEN DONE BY NON-UNION ELECTRICIANS.

10. WITH REFERENCE TO THE RESPONDENT COMPANY, UNTIL 1954 IN THE FALCONBRIDGE AREA AND 1957 IN THE ONAPING AREA, THE COMPANY DID ALL NEW ELECTRICAL INSTALLATION WORK WITH ITS OWN EMPLOYEES. SINCE THAT TIME THE RESPONDENT COMPANY HAS CONTINUED TO DO MUCH OF ITS NEW ELECTRICAL INSTALLATION WORK WITH ITS OWN FORCES. ON AN OVERALL BASIS, THE RESPONDENT COMPANY HAS DONE MORE NEW ELECTRICAL CONSTRUCTION WORK WITH ITS OWN EMPLOYEES THAN IT HAS DONE BY MEMBERS OF THE COMPLAINANT UNION. WHETHER OR NOT THE RESPONDENT COMPANY DOES THE WORK ITSELF OR CONTRACTS IT OUT TO AN ELECTRICAL CONTRACTOR DEPENDS ON FACTORS SUCH AS THE AMOUNT OF NEW CONSTRUCTION ALREADY IN PROGRESS, THE SIZE OF THE CONTEMPLATED NEW PROJECT AND THE NUMBER AND AVAILABILITY OF ITS OWN ELECTRICAL CONSTRUCTION PERSONNEL. THERE IS SOME EVIDENCE TO SUGGEST THAT OVER THE PAST FEW YEARS THE INTERNATIONAL NICKEL COMPANY OF CANADA HAS FOLLOWED A POLICY SIMILAR TO THE RESPONDENT COMPANY IN THE CONTRACTING OUT OF NEW CONSTRUCTION PROJECTS.

11. IN SUMMARY, ON THE BASIS OF ALL THE EVIDENCE BEFORE THE BOARD, RELATING TO PAST PRACTICE, WHILE MEMBERS OF THE COMPLAINANT UNION HAVE DONE A SUBSTANTIAL AMOUNT OF NEW ELECTRICAL INSTALLATION WORK FOR MINING COMPANIES IN ONTARIO, AND A REASONABLE SHARE OF SUCH WORK FOR THE RESPONDENT COMPANY, THE COMPLAINANT BY NO MEANS HAS HAD A MONOPOLY OR ANYTHING APPROACHING A MONOPOLY OVER THE PERFORMANCE OF THE TYPE OF WORK WHICH IS THE SUBJECT OF THE INSTANT DISPUTE.

12. IT MAY WELL BE THAT THE COMPLAINANT UNION CAN MAKE MORE QUALIFIED CONSTRUCTION ELECTRICIANS AVAILABLE WHEN A SUBSTANTIAL NUMBER ARE REQUIRED FOR A LARGE PROJECT. THE RESPONDENT COMPANY, HOWEVER, DOES HAVE A BODY OF CONSTRUCTION ELECTRICIANS THAT WE ARE SATISFIED ARE AS WELL TRAINED, SKILLED, EXPERIENCED AND EFFICIENT IN THE INSTALLATION OF NEW ELECTRICAL CONSTRUCTION WORK AS MEMBERS OF THE COMPLAINANT. WHETHER THE RESPONDENT COMPANY CHOOSES TO PERFORM NEW ELECTRICAL CONSTRUCTION INSTALLATION WORK WITH ITS OWN CONSTRUCTION ELECTRICIANS, EVEN THOUGH IT MAY TAKE LONGER TO COMPLETE THE PROJECT DUE TO LIMITATIONS IN THE NUMBER OF ELECTRICIANS IT HAS AVAILABLE TO DO THE WORK, SURELY IS A DECISION WHICH THE COMPANY MUST BE FREE TO MAKE. OBVIOUSLY, ITS DECISION AS TO WHETHER TO CONSTRUCT A PARTICULAR PROJECT WITH ITS OWN FORCES OR CONTRACT OUT THE WORK WILL BE DICTATED BY THE EXIGENCIES OF ITS PRODUCTION OPERATIONS.

13. WITH REGARD TO COSTS, THE DIFFERENTIAL IN THE WAGE RATES PAID BY THE RESPONDENT COMPANY TO ITS OWN CONSTRUCTION ELECTRICIANS AS COMPARED TO THE WAGE RATES BEING PAID UNDER THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND BEAMER LATHROP LIMITED SUGGESTS THAT IT IS MORE ECONOMICAL FOR THE RESPONDENT COMPANY TO USE ITS OWN ELECTRICIANS ON NEW CONSTRUCTION WORK. FURTHER, IN RECENT YEARS, THE SAFETY RECORD OF THE RESPONDENT COMPANY AMONG ITS OWN CONSTRUCTION ELECTRICIANS IS AT LEAST EQUAL, IF NOT BETTER THAN, THE RECORD FOR OTHER CONSTRUCTION ELECTRICIANS INCLUDING MEMBERS OF THE COMPLAINANT.

14. ONE PARTICULAR ADVANTAGE IN THE RESPONDENT COMPANY EMPLOYING ITS OWN ELECTRICIANS TO PERFORM NEW CONSTRUCTION WORK IS THAT THEIR FAMILIARITY WITH THE ACTUAL INSTALLATIONS FACILITATES THE LOCATING OF ANY DEFECTS THAT MAY SUBSEQUENTLY DEVELOP WHEN THE ELECTRICAL SYSTEMS ARE PUT INTO OPERATION. THIS, OF COURSE, IS OF ASSISTANCE TO THE COMPANY'S STAFF OF MAINTENANCE ELECTRICIANS IN THE PERFORMANCE OF THEIR DUTIES.

15. BASED ON ALL THE EVIDENCE, THE COMPLAINANT HAS FAILED TO SATISFY THE BOARD THAT THE WORK IN DISPUTE SHOULD BE ASSIGNED TO ITS MEMBERS. RATHER, THE BOARD FINDS THAT THE RESPONDENT COMPANY WAS FULLY ENTITLED TO ASSIGN THE WORK TO THE EMPLOYEES IN ITS OWN ELECTRICAL DEPARTMENT REPRESENTED BY THE RESPONDENT UNION.

16. THE BOARD ACCORDINGLY DIRECTS THAT FALCONBRIDGE NICKEL MINES LIMITED CONTINUE TO ASSIGN THE WORK OF INSTALLING ALL ELECTRICAL MOTORS, EQUIPMENT AND APPARATUS AND ALL CONTROLS AND THE WIRING REQUIRED FOR THE OPERATION OF THE MOTORS, EQUIPMENT AND APPARATUS WHICH ARE BEING INSTALLED IN ITS STRATHCONA MINE CONCENTRATOR PLANT AND THE WIRING AND INSTALLATION OF ALL INTERIOR LIGHTING AND POWER OUTLETS IN THE SAID PLANT TO EMPLOYEES IN ITS ELECTRICAL DEPARTMENT WHO ARE REPRESENTED BY THE SUDBURY MINE, MILL AND SMELTER WORKERS' UNION LOCAL 598.

DECISION OF BOARD MEMBER E. BOYER:

JUNE 27, 1968.

I AGREE WITH THE CONCLUSION REACHED BY THE MAJORITY IN THIS COMPLAINT. I DO NOT CONDONE, HOWEVER, THE ACTION OF THE RESPONDENT COMPANY IN TAKING OVER THE ELECTRICAL PORTION OF ITS CONTRACT FROM BEAMER LATHROP AT A TIME WHEN THE LATTER COMPANY AND THE COMPLAINANT UNION WERE AT A CRITICAL STAGE IN THEIR NEGOTIATIONS FOR THE RENEWAL OF A COLLECTIVE AGREEMENT. NEVERTHELESS, I AM SATISFIED THAT THERE IS NO REMEDY AVAILABLE TO THE COMPLAINANT WITH REGARD TO THE CONDUCT OF THE RESPONDENT COMPANY UNDER THE PROVISIONS OF SECTION 66 OF THE ACT WHICH IS DESIGNED SOLELY TO DEAL WITH JURISDICTIONAL DISPUTES.

14546(A)-68-JD: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS'
LOCAL UNION 530 (COMPLAINANT) V. THE BELL TELEPHONE COMPANY OF
CANADA AND THE CANADIAN TELEPHONE EMPLOYEES ASSOCIATION (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, J. B. WATERMAN AND R. SMITH
FOR THE COMPLAINANT, W. K. WINKLER FOR THE RESPONDENT COMPANY, NO ONE
FOR THE RESPONDENT ASSOCIATION.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER
E. BOYER: JUNE 3, 1968.

1. THE COMPLAINANT IS APPLYING TO THE BOARD UNDER SECTION 66 OF THE LABOUR RELATIONS ACT FOR A DIRECTION CONCERNING A DISPUTE ARISING OUT OF AN ASSIGNMENT OF WORK MADE BY THE RESPONDENT COMPANY.
2. THE PARTIES AGREED UPON A STATEMENT OF FACTS CONCERNING THE NATURE OF THE RESPONDENT COMPANY'S COMPLETE OPERATIONS AND THE NATURE OF THE WORK BEING PERFORMED BY THE RESPONDENT COMPANY WHICH IS THE SUBJECT OF THE INSTANT WORK ASSIGNMENT DISPUTE. COUNSEL FOR THE RESPONDENT COMPANY SUBMITS THAT THE RESPONDENT'S BUSINESS, INCLUDING THE WORK IN DISPUTE, FALLS UNDER FEDERAL JURISDICTION AND THAT ACCORDINGLY THE BOARD IS WITHOUT AUTHORITY TO ENTERTAIN THE COMPLAINT. COUNSEL FOR THE COMPLAINANT SUBMITS THAT THE TYPE OF WORK BEING PERFORMED BY THE RESPONDENT COMPANY, WHICH IS THE SUBJECT OF THE PRESENT DISPUTE, IS SEVERABLE FROM THE REST OF THE RESPONDENT COMPANY'S OPERATIONS AND FALLS UNDER PROVINCIAL JURISDICTION. COUNSEL THEREFORE SUBMITS THAT THE BOARD HAS THE AUTHORITY TO DEAL WITH THE COMPLAINT.
3. HAVING CAREFULLY CONSIDERED THE ABLE ARGUMENTS OF COUNSEL AS TO WHETHER THE LABOUR RELATIONS OF THE RESPONDENT COMPANY, IN THE CIRCUMSTANCES OF THE INSTANT COMPLAINT, FALL UNDER FEDERAL OR PROVINCIAL JURISDICTION, THE BOARD IS NOT SATISFIED THAT IT IS WITHOUT AUTHORITY TO ENTERTAIN THE COMPLAINT. THE BOARD THEREFORE ACCEPTS JURISDICTION IN THIS MATTER.
4. THE BOARD ACCORDINGLY DIRECTS THE REGISTRAR TO LIST THE COMPLAINT FOR CONTINUATION OF HEARING. THE BOARD WILL ENTERTAIN THE REPRESENTATIONS OF THE PARTIES ON THE ALTERNATIVE PRELIMINARY ISSUE RAISED BY COUNSEL FOR THE RESPONDENT COMPANY, NAMELY WHETHER THE BOARD HAS JURISDICTION UNDER SECTION 66 OF THE ACT TO DEAL WITH THE COMPLAINT. IN THE EVENT THAT THE BOARD SHOULD MAKE A FINDING THAT IT HAS JURISDICTION UNDER SECTION 66 OF THE ACT, THE PARTIES SHOULD BE PREPARED TO PROCEED WITH THE COMPLAINT ON ITS MERITS.

DECISION OF BOARD MEMBER R. W. TEAGLE: JUNE 3, 1968.

I DISSENT. THE EVIDENCE IS THAT THE EMPLOYEES OF THE RESPONDENT COMPANY, WHO ARE ENGAGED IN THE WORK WHICH IS THE SUBJECT OF THE PRESENT DISPUTE, ARE REGULARLY EMPLOYED IN OTHER PHASES OF THE RESPONDENT'S OVER-ALL OPERATIONS. FOR THIS REASON, IT IS MY VIEW THAT THE WORK IN DISPUTE IS NOT SEVERABLE FROM THE REST OF THE RESPONDENT COMPANY'S OPERATIONS. I ACCORDINGLY FIND THAT THE LABOUR RELATIONS OF THE RESPONDENT COMPANY FALL UNDER FEDERAL JURISDICTION AND THAT THE BOARD THEREFORE IS WITHOUT JURISDICTION TO DEAL WITH THIS MATTER.

14743(A)-68-JD: FRASER-BRACE ENGINEERING COMPANY, LIMITED (COMPLAINANT)
V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486,
AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493
(RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. J. CLARK AND D. H. STEVENS FOR THE COMPLAINANT, A. LALONDE, P. E. GUERTIN AND J. DUNLOP FOR UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486, A.J.P. FOUCAULT AND L. CYR FOR LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493.

DECISION OF THE BOARD: JUNE 24, 1968.

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3. THE COMPLAINANT IN ITS COMPLAINT HAS REQUESTED THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO THE ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT TRADE UNIONS.

4. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING INTERIM ORDER:

THE COMPLAINANT SHALL CONTINUE TO ASSIGN THE WORK OF RELEASING WALL FORMS, TO BE USED AGAIN, WHICH ARE BEING USED BY THE COMPLAINANT ON THE FALCONBRIDGE NICKEL MINE IRON ORE CONCENTRATOR PROJECT AT FALCONBRIDGE TO MEMBERS OF THE RESPONDENT UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486.

FURTHER, THE COMPLAINANT SHALL CONTINUE TO ASSIGN THE WORK OF MOVING, CLEANING, OILING AND CARRYING TO THE NEXT POINT OF ERECTION THE WALL FORMS, TO BE

USED AGAIN, WHICH ARE BEING USED BY THE COMPLAINANT ON THE FALCONBRIDGE NICKEL MINE IRON ORE CONCENTRATOR PROJECT AT FALCONBRIDGE TO MEMBERS OF THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493.

THIS ORDER SHALL BECOME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

14743(B)-68-JD: FRASER-BRANCE ENGINEERING COMPANY, LIMITED (APPLICANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION 493 (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. J. CLARK AND D. H. STEVENS FOR THE APPLICANT, A. J. P. FOUCAULT AND L. CYR FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 24, 1968.

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3. AT THE HEARING IN THIS MATTER, THE REPRESENTATIVE OF THE RESPONDENT TRADE UNION UNDERTOOK TO COMPLY WITH THE INTERIM ORDER ISSUED BY THE BOARD RELATING TO THE COMPLAINT CONCERNING A WORK ASSIGNMENT MADE BY THE COMPLAINANT COMPANY IN BOARD FILE NO. 14743(A)-68-JD.

4. HAVING REGARD TO THE UNDERTAKING MADE BY THE REPRESENTATIVE OF THE RESPONDENT TRADE UNION, COUNSEL FOR THE APPLICANT REQUESTED THAT THIS APPLICATION FOR A CEASE AND DESIST DIRECTION BE ADJOURNED SINE DIE.

5. IN LIGHT OF THE UNDERTAKING OF THE REPRESENTATIVE OF THE RESPONDENT TRADE UNION AND THE REQUEST OF COUNSEL FOR THE APPLICANT, THIS APPLICATION IS ADJOURNED SINE DIE.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13860-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. HI WAY MARKET LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND
BOARD MEMBER R. W. TEAGLE: JUNE 24, 1968.

1. BY LETTER DATED JUNE 7TH, 1968, THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED MAY 21ST, 1968 IN THIS CASE. THE BOARD HAS ALSO RECEIVED LETTERS IN REPLY THERETO DATED JUNE 17TH AND JUNE 18TH FROM COUNSEL FOR THE RESPONDENT AND COUNSEL FOR THE GROUP OF OBJECTORS RESPECTIVELY.

2. WE HAVE CAREFULLY CONSIDERED THE DETAILED REQUEST OF THE APPLICANT AS SET OUT IN ITS COUNSEL'S LETTER. ALTHOUGH THE APPLICANT REFERS TO A NUMBER OF MATTERS IN THE DECISION WITH WHICH IT DOES NOT AGREE, IT IS ADMITTED THAT THERE IS NO EVIDENCE OR ARGUMENTS NOW AVAILABLE THAT WERE NOT AVAILABLE TO THE APPLICANT AT THE TIME THE HEARINGS WERE HELD. IN THE ABSENCE OF THESE FACTORS AND WHERE ALL OF THE ISSUES RAISED WERE BEFORE THE BOARD PRIOR TO THE TIME ITS DECISION WAS MADE, IT IS THE CONSISTENT PRACTICE OF THE BOARD NOT TO EXERCISE ITS DISCRETION UNDER SECTION 79(1) OF THE ACT. IN THE CIRCUMSTANCES OF THIS MATTER WE ARE OF THE OPINION THAT TO LIST THE CASE FOR A FURTHER HEARING AS REQUESTED BY THE APPLICANT WOULD ONLY SERVE TO UNDULY DELAY THE TAKING OF THE REPRESENTATION VOTE PREVIOUSLY DIRECTED BY THE BOARD. THE BOARD, THEREFORE, DOES NOT DEEM IT ADVISABLE TO RECONSIDER OR VARY ITS DECISION DATED MAY 21ST, 1968.

3. ACCORDINGLY, THE REQUEST OF THE APPLICANT IS DENIED.

DECISION OF BOARD MEMBER E. BOYER: JUNE 24, 1968.

WITHOUT IN ANY WAY DETRACTING FROM MY DISSENTING DECISION DATED MAY 21ST, 1968, I CONCUR IN THE ABOVE DECISION THAT BASED ON THE POLICY OF THE BOARD THE REQUEST OF THE APPLICANT FOR REVIEW MUST BE DENIED.

14086-67-R: COMMUNICATIONS WORKERS OF AMERICA, AFL, CIO & CLC (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. NORTHERN ELECTRIC EMPLOYEES ASSOCIATION (INTERVENER #1) V. UNITED STEELWORKERS OF AMERICA (INTERVENER #2).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JUNE 4, 1968.

1. THE RESPONDENT IN ITS LETTER DATED MAY 22ND, 1968 HAS REQUESTED THE BOARD TO INSTRUCT THE EXAMINER WITH RESPECT TO THE ORDER IN WHICH THE PARTIES SHOULD CALL EVIDENCE, AND THE RESPONDENT'S REQUEST IS SET OUT AS FOLLOWS:

AT THE CONCLUSION OF THE LAST EXAMINER'S HEARING IN THE ABOVE REFERRED TO CASE HELD IN OTTAWA ON MAY 14, 1968, THE EXAMINER INDICATED THAT HIS EXAMINATION PURSUANT TO HIS APPOINTMENT WAS COMPLETED. THE EXAMINER FURTHER INDICATED THAT EVIDENCE WAS NOW TO BE CALLED BY THE PARTIES, THE ORDER OF SUCH CALLING OF EVIDENCE TO BE, APPLICANT, RESPONDENT, INTERVENER No. 1, AND INTERVENER No. 2.

IT IS RESPECTFULLY SUBMITTED THAT THE APPLICANT, INTERVENER No. 1 AND INTERVENER No. 2 HAVE IDENTICAL INTERESTS IN THIS CASE, THAT IS, THE THREE SAID PARTIES ALL CLAIM TO REPRESENT CERTAIN INSTALLERS AND OUTSIDE PLANT EMPLOYEES OF THE RESPONDENT. IN LIGHT OF THIS SUBMISSION IT IS RESPECTFULLY SUBMITTED THAT THE ORDER IN WHICH THE PARTIES ARE TO CALL EVIDENCE SHOULD BE, APPLICANT, INTERVENER No. 1, INTERVENER No. 2, AND RESPONDENT. SUCH ORDER WOULD APPEAR TO CONCUR WITH PAST BOARD PRACTICE.

INTERVENER #1 CONCURRED IN THE RESPONDENT'S REQUEST, HOWEVER, THE APPLICANT AND INTERVENER #2 HAVE OPPOSED THE REQUEST.

2. HAVING REGARD TO THE NATURE OF THE EXAMINER'S INQUIRY AND THE FACT THAT FEW RESTRICTIONS ARE PLACED ON THE PARTIES WITH RESPECT TO THE CALLING OF EVIDENCE, THE BOARD FINDS NO REASON WHY IT SHOULD INTERFERE WITH THE DECISION OF THE EXAMINER WITH RESPECT TO THE ORDER IN WHICH THE PARTIES SHOULD CALL THE EVIDENCE IN THE CIRCUMSTANCES OF THIS CASE, SINCE THE EXAMINER'S DECISION SEEMS TO BE CONSISTENT WITH THE BOARD'S ESTABLISHED PRACTICE.

14344-67-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. GOODYEAR SERVICE STORE, A DIVISION OF GOODYEAR TIRE AND RUBBER COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: W. W. TILLER FOR THE APPLICANT, AND
J. B. HASLAM, P. E. VIVIAN, AND O. NORGAARD FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 12, 1968.

1. BY LETTER DATED APRIL 23RD, 1968, THE RESPONDENT REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF APRIL 17TH, 1968. THE FULL TEXT OF THE LETTER IS AS FOLLOWS:

"WE ARE IN RECEIPT OF YOUR LETTER OF APRIL 18, 1968 ENCLOSING A COPY OF THE BOARD'S DECISION AND A COPY OF THE CERTIFICATE ISSUED BY THE BOARD, BOTH DATED APRIL 17, 1968.

WE HAVE CONSIDERED THE DECISION AND THE FORM OF THE CERTIFICATE, AND ARE CONCERNED THAT THE BOARD OMITTED FROM THE DESCRIPTION OF THE BARGAINING UNIT, THE WORDS 'PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD', SO THAT THE FULL DESCRIPTION OF THE BARGAINING UNIT WOULD HAVE BEEN:

'ALL EMPLOYEES OF THE RESPONDENT AT CHATHAM, SAVE AND EXCEPT SERVICE MANAGERS, PERSONS ABOVE THE RANK OF SERVICE MANAGER, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.'

WE WOULD REQUEST THE BOARD THEREFORE, IN THE EXERCISE OF ITS STATUTORY POWERS, TO RECONSIDER ITS DECISION RENDERED ON APRIL 17, 1968 IN ORDER TO VARY THE DESCRIPTION OF THE BARGAINING UNIT TO THAT ABOVE MENTIONED."

2. THE APPLICANT SIMPLY REQUESTS THE BOARD TO DENY THE REQUEST.
3. DURING THE DISCUSSION OF THE BARGAINING UNIT AT THE HEARING, THE RESPONDENT STATED THAT THE EXCEPTIONS IT SEEKS HAD BEEN EXCLUDED FROM BARGAINING UNITS IN ITS STORES AT OTHER LOCALITIES. IT ALSO STATED, HOWEVER, THAT SINCE THE STORE WITH WHICH THE PRESENT APPLICATION IS CONCERNED OPENED ABOUT JULY 18TH, 1965, NEITHER STUDENTS NOR PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK HAD EVER BEEN EMPLOYED THERE. IT IS ON THE BASIS OF THIS EVIDENCE THAT THE BOARD, FOLLOWING ITS CUSTOMARY PRACTICE IN SUCH CIRCUMSTANCES, DETERMINED THE BARGAINING UNIT.
4. HAVING REGARD TO THE FOREGOING, THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER, VARY, OR REVOKE ITS DECISION OF APRIL 17TH, 1968.
5. THE RESPONDENT'S REQUEST IS THEREFORE DENIED.

14428-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. PRE-CON MURRAY LIMITED (RESPONDENT) V. LOCAL NO. 7, OTTAWA, ONTARIO, BRICKLAYERS, MASONS AND PLASTERERS I.U. OF A. (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #2).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JUNE 14, 1968.

1. ON APRIL 22ND, 1968 THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT BACK TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT.
2. THE RESPONDENT HAS NOW REQUESTED THAT THE EXAMINATION OF A WITNESS CALLED BY THE APPLICANT BEFORE THE EXAMINER SHOULD BE TRANSFERRED TO THE BOARD BECAUSE OF ALLEGED QUESTIONS OF CREDIBILITY.
3. THE BOARD HAS CONSIDERED THE REPRESENTATIONS OF THE PARTIES AS SET OUT IN THEIR LETTERS DATED MAY 29, 1968 AND JUNE 5, 1968. IN OUR VIEW, THE RESPONDENT HAS FAILED TO ESTABLISH A CASE WITHIN THE PRINCIPLES SET OUT IN THE BARLIN-SCOTT MANUFACTURING CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1964, P. 595. ACCORDINGLY, AT THIS STAGE OF THE PROCEEDINGS WE ARE NOT PREPARED TO ACCEDE TO THE REQUEST OF THE RESPONDENT.
4. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE SCOPE OF THE EXAMINER'S APPOINTMENT IS NOT BROAD ENOUGH TO INCLUDE AN INQUIRY INTO QUESTIONS OF AREA PRACTICE. IF SUCH MATTERS ARE IN ISSUE, THEN THEY WILL BE DEALT WITH AT A HEARING BEFORE THE BOARD IN ACCORDANCE WITH ITS USUAL PRACTICE.

14532-68-R: MILK & BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. FRITO-LAY INC. (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
D. B. ARCHER AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: I. J. THOMSON AND G. HARRISON FOR THE APPLICANT, AND E. H. WERLE, G. GOODFELLOW, AND G. G. SMITH FOR THE RESPONDENT.

DECISION OF THE BOARD: JUNE 10, 1968.

1. BY LETTER DATED MAY 29TH, 1968, THE RESPONDENT REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF MAY 22ND, 1968, AND TO AMEND THE DESCRIPTION OF THE BARGAINING UNIT DESCRIBED THEREIN SO AS TO EXCLUDE ROUTE SUPERVISORS AND PERSONS ABOVE THE RANK OF ROUTE SUPERVISOR. THE LETTER STATES: "THERE IS AN EMPLOYEE AT THE COMPANY'S OPERATION IN THE INSTANT MATTER IN THE POSITION OF ROUTE SUPERVISOR AND WE REQUEST HIS EXCLUSION."

2. THE APPLICANT, BY LETTER DATED MAY 31ST, 1968, SUGGESTS THE MATTER BE LEFT TO NEGOTIATION, AND THAT AN APPLICATION WITH RESPECT TO THE STATUS OF SOME PARTICULAR EMPLOYEE CAN BE MADE AT A LATER DATE IN THE EVENT OF DISAGREEMENT.

3. THE NOTES OF THE CHAIRMAN OF THE PANEL MADE AT THE HEARING CLEARLY INDICATE THAT THE SUBJECT OF ROUTE SUPERVISOR WAS DISCUSSED AND THAT THE BOARD WAS ADVISED, "CURRENTLY THERE IS NOT A ROUTE SUPERVISOR." IT IS NOT THE PRACTICE OF THE BOARD TO EXCLUDE MANAGEMENT CLASSIFICATIONS WHICH ARE NOT OCCUPIED AT THE TIME OF THE APPLICATION. THE LOWEST EXISTING LEVEL OF PERSONS EXERCISING MANAGERIAL FUNCTIONS AT THE TIME OF THE HEARING WAS, ON THE EVIDENCE, "MANAGER", AND THE BOARD DETERMINED THE BARGAINING UNIT ACCORDINGLY.

4. THE DECISION OF THE BOARD WAS BASED, AS IT MUST BE, ON THE EVIDENCE GIVEN AT THE HEARING WITH RESPECT TO MANAGERIAL CLASSIFICATIONS. THE DECISION CANNOT NOW BE ALTERED TO CONFORM TO FACTS ARISING SUBSEQUENT TO THE HEARING, AS THE RESPONDENT APPEARS TO REQUEST. IN THE CIRCUMSTANCES THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER, VARY, OR REVOKE ITS DECISION OF MAY 22ND, 1968. THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED.

14534-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. FORENTA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
D. B. ARCHER AND H. F. IRWIN.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
D. B. ARCHER: JUNE 20, 1968.

1. THE RESPONDENT BY ITS LETTER DATED JUNE 11TH, 1968, HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF MAY 30TH, 1968, IN THIS MATTER. HAVING REGARD TO THE REPRESENTATIONS MADE TO THE BOARD BY THE RESPONDENT IN ITS LETTER DATED JUNE 11TH, 1968, BY THE SOLICITOR FOR THE OBJECTORS IN HIS LETTER OF JUNE 17TH, 1968, AND THE REPRESENTATIONS OF THE APPLICANT IN ITS LETTER DATED JUNE 12TH, 1968, THE BOARD FINDS THAT THE RESPONDENT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE TO IT AT THE HEARING IN THIS MATTER. SINCE THE BOARD CONSIDERED ALL THE ISSUES RAISED BY THE PARTIES IN THE LETTERS ABOVE REFERRED TO, PRIOR TO REACHING ITS DECISION DATED MAY 30TH, 1968, THE BOARD THEREFORE DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER ITS DECISION DATED MAY 30TH, 1968, IN THIS MATTER.

2. THE REQUEST OF THE RESPONDENT IS ACCORDINGLY DENIED.

DECISION OF BOARD MEMBER H. F. IRWIN:

JUNE 20, 1968.

WITHOUT DEROGATING FROM MY DISSENT DATED MAY 30TH, 1968 IN THIS MATTER, I AGREE WITH THE MAJORITY THAT THE RESPONDENT HAS NOT ESTABLISHED GROUNDS UPON WHICH THE BOARD SHOULD RECONSIDER ITS DECISION IN THIS MATTER.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

14651-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. WEST FRONT CONSTRUCTION LTD. (RESPONDENT).

7. THE RESPONDENT'S POSITION IS THAT THERE WERE THREE LABOURERS IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. IT IS CLEAR THAT AMONG THIS GROUP, THE APPLICANT HAS MORE THAN FIFTY-FIVE PER CENT AS MEMBERS. WHILE THERE MAY BE SOME QUESTION AS TO WHETHER THE TRUCK DRIVER AND CEMENT FINISHER ARE TO BE INCLUDED IN THE BARGAINING UNIT, THIS IS A MATTER WHICH THE PARTIES THEMSELVES SHOULD BE ABLE TO RESOLVE IN COLLECTIVE BARGAINING. HOWEVER, IF SUCH PROVES NOT TO BE THE CASE, IT IS ALWAYS OPEN TO EITHER PARTY TO REFER THE MATTER BACK TO THE BOARD FOR CLARIFICATION UNDER THE PROVISIONS OF SECTION 79(1) OF THE LABOUR RELATIONS ACT. FOR PURPOSES OF THE RECORD, IT SHOULD BE NOTED THAT EVEN IF THE TRUCK DRIVER AND CEMENT FINISHER WERE INCLUDED IN THE BARGAINING UNIT, THE APPLICANT WOULD STILL HAVE AS MEMBERS OVER FIFTY-FIVE PER CENT IN SUCH A GROUP.

(JUNE 4, 1968).

14655-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) v. MARCHMOUNT CONSTRUCTION LIMITED (RESPONDENT) v. AN EMPLOYEE (OBJECTOR).

6. BOTH THE RESPONDENT AND AN EMPLOYEE IN THE BARGAINING UNIT MADE ALLEGATIONS OF MISREPRESENTATION BY THE APPLICANT. IN THE ALCAN-COLONY LIMITED CASE, O.L.R.B. MONTHLY REPORT JUNE 1963, P. 159, THE BOARD POINTED OUT THAT THE ONUS OF ESTABLISHING SUCH MATTERS RESTED ON THE PERSON MAKING THE ALLEGATION. IN THE PRESENT CASE, THE APPLICATION WAS PUT ON FOR HEARING TO ENABLE THE RESPONDENT AND THE EMPLOYEE IN QUESTION TO PROVE THEIR ALLEGATIONS. NEITHER THE RESPONDENT NOR THE EMPLOYEE IN QUESTION APPEARED AT THE HEARING AND CONSEQUENTLY, THE BOARD HAS NO EVIDENCE RESPECTING THE ALLEGATIONS.

(JUNE 14, 1968).

STATISTICAL TABLES FOR JUNE 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		JUNE 1968	1ST 3 MONTHS OF FISCAL YEAR 1968-69	1967-68
I.	CERTIFICATION	91	271	256
II.	DECLARATION TERMINATING BARGAINING RIGHTS	1	9	24
III.	DECLARATION OF SUCCESSOR STATUS	1	8	1
IV.	DECLARATION THAT STRIKE UNLAWFUL	1	14	15
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	3	11
VI.	CONSENT TO PROSECUTE	8	21	45
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	25	63	26
VIII.	MISCELLANEOUS	<u>10</u>	<u>22</u>	<u>14</u>
	TOTAL	<u>137</u>	<u>411</u>	<u>392</u>

TABLE III

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		JUNE 1968	1ST 3 MONTHS OF FISCAL YEAR 1968-69	1967-68
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		97	290	271

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		JUNE 1968	1ST 3 MTHS OF FISCAL YEAR 1968-69	1967-68
I.	CERTIFICATION	82	268	263
II.	DECLARATION TERMINATING BARGAINING TIGHTS	2	12	20
III.	DECLARATION OF SUCCESSOR STATUS	1	8	1
IV.	DECLARATION THAT STRIKE UNLAWFUL	2	14	12
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	1	3	3
VI.	CONSENT TO PROSECUTE	9	25	20
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	19	59	44
VIII.	MISCELLANEOUS	<u>5</u>	<u>18</u>	<u>24</u>
TOTAL		<u>121</u>	<u>407</u>	<u>387</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>JUNE</u> <u>1968</u>	<u>1ST 3 MONTHS</u> <u>1968-69</u>	<u>FISCAL YR.</u> <u>1967-68</u>	<u>JUNE</u> <u>1968</u>	<u>1ST 3 MONTHS</u> <u>1968-69</u>	<u>FISCAL YR.</u> <u>1967-68</u>
I. <u>CERTIFICATION</u>						
GRANTED	56	172	191	2005	7069	5789
DISMISSED	20	68	55	877	1746	3570
WITHDRAWN	<u>6</u>	<u>28</u>	<u>17</u>	<u>316</u>	<u>797</u>	<u>350</u>
TOTAL	<u>82</u>	<u>268</u>	<u>263</u>	<u>3198</u>	<u>9612</u>	<u>9709</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	1	6	10	38	159	14
DISMISSED	1	5	10	14	41	11
WITHDRAWN	<u>-</u>	<u>1</u>	<u>-</u>	<u>-</u>	<u>19</u>	<u>-</u>
TOTAL	<u>2</u>	<u>12</u>	<u>20</u>	<u>52</u>	<u>219</u>	<u>26</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATION FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
	<u>JUNE</u>	<u>1ST 3 MONTHS OF FISCAL YR.</u>		
	<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>	
III. <u>DECLARATION THAT STRIKE</u>				
<u>UNLAWFUL</u>				
GRANTED	-	1	-	
DISMISSED	-	2	2	
WITHDRAWN	<u>2</u>	<u>11</u>	<u>10</u>	
TOTAL	<u>2</u>	<u>14</u>	<u>12</u>	
IV. <u>DECLARATION THAT LOCKOUT</u>				
<u>UNLAWFUL</u>				
GRANTED	-	-	-	
DISMISSED	-	1	1	
WITHDRAWN	<u>1</u>	<u>2</u>	<u>2</u>	
TOTAL	<u>1</u>	<u>3</u>	<u>3</u>	
V. <u>CONSENT TO PROSECUTE</u>				
GRANTED	1	5	2	
DISMISSED	3	7	2	
WITHDRAWN	<u>5</u>	<u>13</u>	<u>16</u>	
TOTAL	<u>9</u>	<u>25</u>	<u>20</u>	
VI. <u>COMPLAINT OF UNFAIR</u>				
<u>PRACTICE IN EMPLOYMENT</u>				
<u>(SECTION 65)</u>				
GRANTED	-	1	2	
DISMISSED	7	18	6	
WITHDRAWN	<u>12</u>	<u>40</u>	<u>2</u>	
TOTAL	<u>19</u>	<u>59</u>	<u>10</u>	

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>JUNE</u> <u>1968</u>	<u>1ST 3 MTHS FISCAL YR.</u> <u>1968-69</u>	<u>1967-68</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	3	7	3
POST-HEARING VOTE	3	10	16
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	2	2	5
POST-HEARING VOTE	1	8	7
BALLOTS NOT COUNTED	-	-	-
TOTAL	<u>9</u>	<u>27</u>	<u>31</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>JUNE</u> <u>1968</u>	<u>1ST 3 MTHS FISCAL YR.</u> <u>1968-69</u>	<u>1967-68</u>
*RESPONDENT UNION SUCCESSFUL	-	-	1
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>4</u>	<u>5</u>
TOTAL	<u>1</u>	<u>4</u>	<u>6</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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14439-68-U: THE GREAT ATLANTIC AND PACIFIC TEA
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14648-68-U: AMERICAN OPTICAL COMPANY CANADA
LIMITED
14727-68-U: INTERNATIONAL HARVESTER COMPANY
(HAMILTON WORKS), AND THE UNITED
STEELWORKERS OF AMERICA - UNION
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WM. SCANDLON AND MR. STEWARD COKE)
OF THE NAMED UNION

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14533-68-M: SUPERIOR SANITATION SERVICES LIMITED,
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LIMITED, T.H. GLEN, TORONTO BRITISH
AMERICAN OIL CO. LIMITED, K.G. COOKE,
HAMILTON, WESTINGHOUSE, L.G. KERR,
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DURING JULY 1968

BARGAINING AGENTS CERTIFIED DURING JULY

NO VOTE CONDUCTED

14273-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. VERSAFOOD SERVICES LIMITED INSTITUTIONS DIVISION UNIVERSITY OF GUELPH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE UNIVERSITY OF GUELPH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, DIETITIANS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (126 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED ON A TEMPORARY OR CASUAL BASIS ARE NOT INCLUDED IN THE BARGAINING UNIT AND THAT THE SUPERVISOR OF PORTERS AND THE SUPERVISOR OF INVENTORY AND STORES ARE NOT INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 365).

14468-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. EDWARDS OF CANADA, A UNIT OF GENERAL SIGNAL OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE, SALES, AND FIELD SERVICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (132 EMPLOYEES IN THE UNIT).

14654-68-R: THE HOTEL AND CLUB EMPLOYEES' UNION, LOCAL 299, TORONTO OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION, A.F.L.-C.I.O.-C.L.C. (APPLICANT) V. THE SUTTON PLACE HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT DEPARTMENT HEADS AND PERSONS ABOVE THE RANK OF ASSISTANT DEPARTMENT HEAD, ACCOUNTING DEPARTMENT, RESERVATIONS SECRETARY, ONE SECRETARY TO THE GENERAL MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (222 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14669-68-R: GENERAL TRUCK DRIVERS LOCAL 879 OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. T. J. WELSH LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

14671-68-R: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. SCEPTER MANUFACTURING COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (65 EMPLOYEES IN THE UNIT).

14687-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. TURESKI CONSTRUCTION CO. LTD. (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA GREATER NIAGARA ONTARIO CARPENTERS DISTRICT COUNCIL (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS EMPLOYED BY THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14689-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. ADVANCE CONTAINERS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SOUTHWOLD SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE SPECIAL CIRCUMSTANCES OF THIS CASE AND TO THE AGREEMENT OF THE PARTIES).

14705-68-R: LOCAL UNION 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. HARLOCK - SCHULTZ ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND EMPLOYEES COVERED BY A CERTIFICATE OF THE ONTARIO LABOUR RELATIONS BOARD DATED MAY 17TH, 1968." (6 EMPLOYEES IN THE UNIT).

14707-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. BEDARD GIRARD LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14711-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LAKE-WOOD FOREST PRODUCTS (EASTERN) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TWEED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (51 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 371).

14715-68-R: NURSES' ASSOCIATION PERTH COUNTY HEALTH UNIT (APPLICANT) V. PERTH COUNTY HEALTH UNIT. (RESPONDENT).

UNIT: "ALL REGISTERED AND GRADUATE NURSES IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISOR OF NURSING AND PERSONS ABOVE THE RANK OF SUPERVISOR OF NURSING." (12 EMPLOYEES IN THE UNIT).

14716-68-R: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. DOMINION GLASS COMPANY LIMITED, TORONTO WEST WAREHOUSE (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS TORONTO WEST WAREHOUSE IN METROPOLITAN TORONTO, SAVE AND EXCEPT WAREHOUSE MANAGER, OFFICE AND PERSONNEL MANAGER, PERSONS ABOVE THE RANK OF WAREHOUSE MANAGER AND OFFICE AND PERSONNEL MANAGER, CLERICAL ASSISTANTS TO THE WAREHOUSE MANAGER AND OFFICE AND PERSONNEL MANAGER, SECURITY GUARDS, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (7 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14719-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. STRATHROY DISTRICT COLLEGIATE INSTITUTE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT STRATHROY, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT." (15 EMPLOYEES IN THE UNIT).

14721-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL NURSING EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE SECONDARY SCHOOL SYSTEM IN THE TOWNSHIPS OF LONDON AND DORCHESTER." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14722-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. COMBINED ROMAN CATHOLIC SEPARATE SCHOOL BOARD OF THE CITY OF LONDON (RESPONDENT).

UNIT: "ALL NON-TEACHING EMPLOYEES OF THE RESPONDENT ENGAGED IN CUSTODIAL AND MAINTENANCE SERVICES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (54 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14723-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE SECONDARY SCHOOL SYSTEM IN THE TOWNSHIPS OF LONDON AND DORCHESTER, SAVE AND EXCEPT MAINTENANCE SUPERINTENDENTS, CAFETERIA MANAGERS, PERSONS ABOVE THE RANK OF MAINTENANCE SUPERINTENDENT AND CAFETERIA MANAGER, OFFICE AND CLERICAL STAFF." (21 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14725-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SONCO TUBE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRAMPTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (108 EMPLOYEES IN THE UNIT).

14726-68-R: SCHNEIDER EMPLOYEES' ASSOCIATION (APPLICANT) V. J. M. SCHNEIDER LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WELLESLEY, SAVE AND EXCEPT ASSISTANT FOREMEN, PERSONS ABOVE THE RANK OF ASSISTANT FOREMAN, OFFICE AND SALES STAFF, AND PERSONS EMPLOYED ON A CASUAL BASIS." (33 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14732-68-R: LABORERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 607 (APPLICANT) V. B & B STONE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

14733-68-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF OWEN SOUND (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OWEN SOUND ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (47 EMPLOYEES IN THE UNIT).

14734-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. MCCARTHY BUS LINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."
(10 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES DATED JULY 17TH, 1968).

14736-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) v. JOHN PALANGIO ENTERPRISES LIMITED, CARRYING ON BUSINESS AS DELUXE COACH LINES (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."
(9 EMPLOYEES IN THE UNIT).

14737-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. GLENCOE DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GLENCOE ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

14738-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. WEST ELGIN DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

14739-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v. RIDGETOWN DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

14745-68-R: INTERNATIONAL BROTHERHOOD OF PULP SULPHITE AND PAPER MILL WORKERS AFL-CIO-CLC (APPLICANT) v. C.I.P. CONTAINERS LIMITED (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER) v. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MARKHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES

STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(31 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 374).

14755-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. DOMESTIC
TANK & EQUIPMENT LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(46 EMPLOYEES IN THE UNIT).

14756-68-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION, LOCAL
343 (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA
(RESPONDENT).

UNIT: "ALL CLERICAL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO,
SAVE AND EXCEPT BUSINESS MANAGER, PERSONS ABOVE THE RANK OF BUSINESS
MANAGER." (2 EMPLOYEES IN THE UNIT).

14763-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 INTERNATIONAL
BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS
(APPLICANT) V. PINEHILL AUTO LTD. (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT IN
METROPOLITAN TORONTO, SAVE AND EXCEPT SALES MANAGERS AND PERSONS ABOVE
THE RANK OF SALES MANAGER." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 375).

14764-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 595
(APPLICANT) V. INSPIRATION LIMITED HAMILTON BUILDING DIVISION
(RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN
THE COUNTIES OF BRANT AND NORFOLK SAVE AND EXCEPT NON-WORKING FOREMEN
AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN
THE UNIT).

14765-68-R: SUDBURY MINE MILL & SMELTER WORKERS' UNION LOCAL 598
(APPLICANT) V. FALCONBRIDGE NICKEL MINES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE BUCKING ROOM OF THE
METALLURGICAL ENGINEERING DEPARTMENT & LABORATORY IN THE SUDBURY DIS-
TRICT SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND
THOSE PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN
THE APPLICANT AND THE RESPONDENT AND/OR BETWEEN THE UNITED STEEL-
WORKERS OF AMERICA LOCAL 6855 AND THE RESPONDENT." (3 EMPLOYEES IN
THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14766-68-R: NURSES' ASSOCIATION OF CHRYSLER CANADA LTD., WINDSOR, ONT. (APPLICANT) V. CHRYSLER CANADA LTD. (RESPONDENT).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED AS OCCUPATIONAL HEALTH NURSES BY THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (12 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED AS OCCUPATIONAL HEALTH NURSES BY THE RESPONDENT AT WINDSOR FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (5 EMPLOYEES IN THE UNIT).

14767-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. LEEDS BRIDGE & IRON WORKS LTD. (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 765 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GANANOQUE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 765." (15 EMPLOYEES IN THE UNIT).

14769-68-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 236 (APPLICANT) V. ABITIBI PROVINCIAL PAPER LTD., PORT ARTHUR DIVISION (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES EMPLOYED IN THE RESPONDENT'S OFFICES AT ITS MILL IN PORT ARTHUR, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CHIEF TIMEKEEPER, MILL ACCOUNTANT, SAFETY CO-ORDINATOR, CHIEF STOREKEEPER, EMPLOYMENT SUPERVISOR, ELECTRICAL TECHNICIAN, ONE SECRETARY TO THE OFFICE MANAGER AND EMPLOYMENT SUPERVISOR, ONE SECRETARY TO THE MILL MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, LOCAL 40, THE UNITED PAPERMAKERS AND PAPERWORKERS, LOCAL 239, THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 865, AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 1565." (45 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14770-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. BLenheim DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BLenheim ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

14773-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PUBLIC SCHOOL BOARD OF THE TOWNSHIP SCHOOL AREA OF THURLOW (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SECRETARY-TREASURER, PERSONS ABOVE THE RANK OF SECRETARY-TREASURER, PROFESSIONAL TEACHERS AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

14774-68-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS INTERNATIONAL UNION A.F.L.-C.I.O.-C.L.C. LOCAL 197 (APPLICANT) V. QUEEN'S TAVERN (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT OWNER AND MANAGER, PERSONS ABOVE THE RANK OF OWNER AND MANAGER AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (6 EMPLOYEES IN THE UNIT).

14775-68-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. DE HAAN CARTAGE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF PRESTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

14776-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. BEAVER ASPHALT (ONTARIO) LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14777-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. R. J. NICOL CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14779-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MALDEN READY-MIX CONCRETE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN MALDEN TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

14780-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. THE TORONTO-DOMINION CENTRE LIMITED OPERATING DIVISION (RESPONDENT) V. EMPLOYEE (OBJECTOR)

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE TORONTO-DOMINION CENTRE IN

METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (14 EMPLOYEES IN THE UNIT).

14783-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 595 (APPLICANT) V. RENWICK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14801-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. RAYMOND SNACK FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY THE BOARD'S CERTIFICATE DATED FEBRUARY 28TH, 1968." (4 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PLANT CLERICAL EMPLOYEES, QUALITY CONTROL TECHNICIANS AND LABORATORY TECHNICIANS ARE EMPLOYEES OF THE RESPONDENT EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

FOR THE PURPOSES OF CLARITY, THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD RECEIVER AND HEAD SHIPPER ARE EQUAL TO OR ARE ABOVE THE RANK OF FOREMAN AND ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF FOREMEN.

BY WAY OF EXPLANATION, THE BARGAINING UNIT DESCRIBED ABOVE IS COMPRISED OF STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

14802-68-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ALBRIGHT MANOR, BEAMSVILLE, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14803-68-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. THE MCBEE COMPANY (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL PHOTOLITHOGRAPHIC OFFSET PRESSMEN, THEIR APPRENTICES, FEEDERS AND PRESS HELPERS, AND ALL PHOTOLITHOGRAPHIC OFFSET CAMERA OPERATORS, STRIPPERS, PLATEMAKERS AND THEIR APPRENTICES IN THE EMPLOY OF THE COMPANY AT ITS PLANT LOCATED AT 179 BARTLEY DRIVE, TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."

(25 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14804-68-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204
(APPLICANT) V. ALBRIGHT GARDENS HOMES INCORPORATED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BEAMSVILLE, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, CRAFT INSTRUCTOR, PURCHASING AGENT, STOCKKEEPER, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, FOOD SERVICE STAFF, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (55 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

FOR THE PURPOSE OF CLARITY THE BOARD NOTES THAT FOOD SERVICE STAFF ARE NOT EMPLOYEES OF THE RESPONDENT.

14808-68-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT)
V. HANES OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, CHIEF ENGINEER, OFFICE AND SALES STAFF, HOME WORKERS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (154 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14809-68-R: LOCAL UNION #231 OF THE INTERNATIONAL BROTHERHOOD OF OPERATIVE POTTERS (APPLICANT) V. AMERICAN-STANDARD PRODUCTS (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF, FOREMEN'S CLERKS, TIME-KEEPERS, RATE SETTERS, TIME STUDY MEN, TECHNICAL STAFF, STORE-KEEPERS, CHIEF INSPECTORS, FIRST AID AND SAFETY DEPARTMENT WATCHMEN AND GUARDS." (10 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14811-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. C & T REINFORCING STEEL (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR,

CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14812-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14813-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. DROGE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14814-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. WESTERN CAISSONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

14815-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. BRANDOW & MACDONALD CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

14816-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT) V. AUGUST EQUIPMENT LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14821-68-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F.L., C.I.O.-C.L.C. (APPLICANT) V. CENTRAL PARK LODGES OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, ONTARIO, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE VACATION PERIOD." (52 EMPLOYEES IN THE UNIT).

FOR THE PURPOSE OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE HEAD COOK IS A SUPERVISOR AND AS SUCH IS NOT INCLUDED IN THE BARGAINING UNIT.

14824-68-R: NURSES' ASSOCIATION SYDENHAM DISTRICT HOSPITAL (APPLICANT) V. SYDENHAM DISTRICT HOSPITAL (RESPONDENT).

UNIT #1: "ALL GRADUATE AND REGISTERED NURSES EMPLOYED BY THE RESPONDENT AT WALLACEBURG ENGAGED IN NURSING CARE, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (21 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL GRADUATE AND REGISTERED NURSES OF THE RESPONDENT AT WALLACEBURG REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (49 EMPLOYEES IN THE UNIT).

14825-68-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE MITCHELL AND DISTRICT HIGH SCHOOL BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

14826-68-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L. (APPLICANT) V. THE MITCHELL PUBLIC SCHOOL BOARD OF EDUCATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

14828-68-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PEACOCK PLASTERING SERVICE LIMITED (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES, OATHERS AND LATHERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND WYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, GRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

14830-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

UNIT: "ALL MILLWRIGHTS AND MILLWRIGHTS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

14839-68-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. A-ROSS LEASING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS DEPOT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (21 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE TERM OFFICE STAFF INCLUDES CLERKS AND DISPATCHERS.

14840-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. ORLANDO CONSTRUCTION Co. LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14845-68-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 210 (APPLICANT) V. COMBINED ROMAN CATHOLIC SEPARATE SCHOOLS WALLACEBURG (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

14846-68-R: LOCAL UNION 305, INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (APPLICANT) V. STAR BOTTLING WORKS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (49 EMPLOYEES IN THE UNIT).

14848-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BELLER STEEL COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (33 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 377).

14857-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. COCKSHUTT FARM EQUIPMENT OF CANADA LIMITED (RESPONDENT).V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

14866-68-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PEACOCK PLASTERING SERVICE LTD. (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES, LATHERS AND LATHERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

14115-67-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SILVERWOOD DAIRIES, LIMITED (RESPONDENT) V. NORTH BAY GENERAL WORKERS UNION, LOCAL 1603, CANADIAN LABOUR CONGRESS (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN OR ABOUT ITS PLANT AT NORTH BAY, SAVE AND EXCEPT OFFICE STAFF, MILK ROUTE FOREMEN, FOREMEN, PERSONS ABOVE THE RANK OF MILK ROUTE FOREMAN AND FOREMAN, ICE CREAM TERRITORY SUPERVISORS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		33
NUMBER OF PERSONS WHO CAST BALLOTS	32	
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	14	

14297-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC (APPLICANT) V. DOMINION STORES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL STORES AT OTTAWA, SAVE AND EXCEPT ASSISTANT STORE MANAGERS, PERSONS ABOVE THE RANK OF ASSISTANT STORE MANAGER, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (245 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	109
NUMBER OF PERSONS WHO CAST BALLOTS	108
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	87
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	20
BALLOTS SEGREGATED AND NOT COUNTED	1

14404-68-R: INTERNATIONAL PRINTING PRESSMEN & ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. MORTIMER LIMITED (RESPONDENT) V. LOCAL UNION #173, INTERNATIONAL BROTHERHOOD OF BOOKBINDERS (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANTS AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS COVERED BY SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND (1) LOCAL 224 LITHOGRAPHERS & PHOTOENGRAVERS INTERNATIONAL UNION, (2) LOCAL 173 INTERNATIONAL BROTHERHOOD OF BOOKBINDERS, AND (3) OTTAWA PRINTING PRESSMEN AND ASSISTANTS' UNION No. 5." (52 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	35
NUMBER OF PERSONS WHO CAST BALLOTS	35
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	31
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

14414-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 749 (APPLICANT) V. CORPORATION OF THE TOWN OF WALLACEBURG (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE WORKS DEPARTMENT OF THE RESPONDENT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	27
NUMBER OF PERSONS WHO CAST BALLOTS	27
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	26
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

14663-68-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT)
V. VAGDEN MILLS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TRENTON, ONTARIO, SAVE AND EXCEPT FOREMEN, FORELADIES, THOSE ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, HOMEWORKERS AND PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (35 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	34
NUMBER OF PERSONS WHO CAST BALLOTS	34
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	20
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	13

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JULY

NO VOTE CONDUCTED

13402-67-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BABCOCK & WILCOX CANADA LTD. (RESPONDENT) V. DRAFTSMEN'S ASSOCIATION OF ONTARIO, LOCAL 164, A.F.T.E., A.F.L. - C.I.O., C.L.C. (INTERVENER) GROUP OF EMPLOYEES (OBJECTORS). (200 EMPLOYEES).

14067-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. THE QUEEN ELIZABETH HOSPITAL, TORONTO (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 361).

14309-68-R: NORTH BAY GENERAL WORKERS UNION, LOCAL 1603, CANADIAN LABOUR CONGRESS (APPLICANT) V. SILVERWOOD DAIRIES, LIMITED (NORTH BAY BRANCH) (RESPONDENT). (33 EMPLOYEES).

14673-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. AUSTIN MOTOR COMPANY, DIVISION OF BRITISH MOTOR HOLDINGS CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (6 EMPLOYEES).

14700-68-R: GENERAL TRUCK DRIVERS UNION LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. MAINWAY FORD SALES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (16 EMPLOYEES).

14746-68-R: KITCHENER FOOD MARKETS EMPLOYEES ASSOCIATION (APPLICANT) V. DUTCH BOY FOOD MARKET OPERATED BY KITCHENER FOOD MARKET LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORE ON MARGARET AVENUE AT KITCHENER, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER AND OFFICE STAFF." (43 EMPLOYEES IN THE UNIT).

14747-68-R: KITCHENER FOOD MARKETS EMPLOYEES ASSOCIATION (APPLICANT) V. DUTCH BOY FOOD MARKET OPERATED BY KITCHENER FOOD MARKET LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORE AT HIGHLAND ROAD WEST AT KITCHENER, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER, OFFICE STAFF AND PERSONS COVERED BY A CERTIFICATE OF THE ONTARIO LABOUR RELATIONS BOARD." (57 EMPLOYEES IN THE UNIT).

14760-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. LITTLE BROTHERS (WESTON) LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (17 EMPLOYEES).

14761-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. WHITE-GORDON MERCURY SALES LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN IN THE EMPLOY OF THE RESPONDENT AT PORT CREDIT, SAVE AND EXCEPT MANAGERS AND PERSONS ABOVE THE RANK OF MANAGER." (10 EMPLOYEES IN THE UNIT).

14819-68-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) V. MILNER ROAD ENTERPRISES LIMITED (RESPONDENT). (5 EMPLOYEES).

14822-68-R: JAEGER EMPLOYEES' UNION (APPLICANT) V. JAEGER MACHINE COMPANY OF CANADA LTD. (RESPONDENT). (41 EMPLOYEES).

14852-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. WEST ELGIN DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF AND PERSONS COVERED BY A CERTIFICATE OF THE BOARD DATED JULY 19TH, 1968." (NO EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 379).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

14013-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 2486 (APPLICANT) V. INDUSTRIAL-MINE INSTALLATIONS LIMITED
(RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE
RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY
FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE
THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	3

14177-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE
WORKERS (APPLICANT) V. ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED
(RESPONDENT) V. A. & M. EMPLOYEES' ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOLLINGER ROAD PLANT
AND BERMONDSEY ROAD PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(81 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	76
NUMBER OF PERSONS WHO CAST BALLOTS	75
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	38
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	36

(SEE INDEXED ENDORSEMENT PAGE 364).

14529-68-R: PRINTING SPECIALTIES & PAPER PRODUCTS UNION LOCAL 466
(APPLICANT) V. PRECISION DATA CARDS LIMITED & CO. (RESPONDENT) V.
GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND
EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF
AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES
IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	35
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NUMBER OF PERSONS WHO CAST BALLOTS	35
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	16
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	19

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JULY

14735-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. TRANSPORT PERSONNEL AND PLACEMENT LTD. (RESPONDENT). (46 EMPLOYEES).

14772-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. STONE AND WEBSTER CANADA LIMITED (RESPONDENT). (3 EMPLOYEES).

14799-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. DOMINION BRIDGE COMPANY LIMITED, CONSTRUCTION PRODUCTS DIVISION (RESPONDENT). (2 EMPLOYEES).

14831-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. T. A. ANDRE AND SONS LIMITED (RESPONDENT) (16 EMPLOYEES).

14844-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. J. M. FULLER LTD. (RESPONDENT). (5 EMPLOYEES).

14864-68-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 537 (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT). (2 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
OF DURING JULY

13813-67-R: THE LITHOGRAPHIC AND LETTERPRESS EMPLOYEES OF SUMNER PRINTING & PUBLISHING CO. LTD., AND (WINDSOR PLATEMAKERS LTD.) (APPLICANT) V. WINDSOR PRINTING PRESSMEN & ASSISTANTS' UNION, LOCAL 274 (RESPONDENT) V. SUMNER PRINTING & PUBLISHING COMPANY LIMITED (INTERVENER). (WITHDRAWN). (12 EMPLOYEES).
(SEE INDEXED ENDORSEMENT PAGE 380).

14469-68-R: JACK CHAPMAN AND EDWARD BOUGHEN ET. AL., (APPLICANTS) V. INTERNATIONAL WOODWORKERS OF AMERICA (RESPONDENT) V. CURVPLY WOOD PRODUCTS (INTERVENER) (GRANTED).

UNIT: "THE EMPLOYEES OF CURVPLY WOOD PRODUCTS AT ORONO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (104 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	90
NUMBER OF PERSONS WHO CAST BALLOTS	90
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	25
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	65

14598-68-R: TOM PARASKEVAIDIS AND A GROUP OF EMPLOYEES (APPLICANTS) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT) V. CONVERTO EQUIPMENT MANUFACTURING LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF CONVERTO EQUIPMENT MANUFACTURING LIMITED AT KITCHENER, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY WORKING TWENTY-FOUR (24) HOURS PER WEEK OR LESS." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON	
VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	2
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	8

14748-68-R: CANADA SAND PAPERS LIMITED (APPLICANT) V. THE CANADIAN UNION OF OPERATING ENGINEERS (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (6 EMPLOYEES). (GRANTED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING JULY

14542-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. WEAN-MCKAY OF CANADA LIMITED (RESPONDENT) V. GALT ENGINEERING TRADES UNION. BRANCH NUMBER ONE (PREDECESSOR TRADE UNION). (GRANTED).

14625-68-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 527 (APPLICANT) V. MCKENNA BROTHERS LIMITED (RESPONDENT) V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 721 (PREDECESSOR TRADE UNION). (GRANTED).

14626-68-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 527 (APPLICANT) V. CENTRAL MECHANICAL CONTRACTORS (GUELPH) LIMITED (RESPONDENT). V. THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA - LOCAL UNION 721 (PREDECESSOR TRADE UNION) (GRANTED).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING JULY

14841-68-U: MANSFIELD-DENMAN GENERAL COMPANY LIMITED, INDUSTRIAL PRODUCTS DIVISION, WELLAND, ONTARIO (APPLICANT) V. W. GARRETT ET AL (RESPONDENTS). (WITHDRAWN).

14806-68-U: ROBERTSON-IRWIN LIMITED (APPLICANT) V. UNITED STEEL WORKERS OF AMERICA, LOCAL 4166 (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING JULY

14588-68-U: NATIONAL AUTO RADIATOR MANUFACTURING COMPANY LIMITED (APPLICANT) V. JOHN GRANT, VINCENT HAMELIN, BERNARD DEBLOIS, MICHAEL LEDINGHAM AND JON VARNEY (RESPONDENTS). (GRANTED).

14640-68-U: THE CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 43 (APPLICANT) V. THE MUNICIPALITY OF METROPOLITAN TORONTO (RESPONDENT). (GRANTED).

14641-68-U: THE CIVIC EMPLOYEES' UNION, LOCAL 43 (APPLICANT) V. THE CORPORATION OF THE CITY OF TORONTO (RESPONDENT). (DISMISSED).

14728-68-U: A.F. GUTSFELD, A. GUTSFELD'S WELDING EXPERT BUILDUP & HARD-FACING 13 LONDON STREET NORTH, HAMILTON ONT. (APPLICANT) V. INTERNATIONAL HARVESTER COMPANY - HAMILTON WORKS, AND THE UNITED STEELWORKERS OF AMERICA - UNION OFFICERS FROM THE LOCAL 2868 (MR. WM. SCANDLON AND MR. STEWARD COKE) OF THE NAMED UNION (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 380).

14842-68-U: MANSFIELD-DENMAN GENERAL COMPANY LIMITED, INDUSTRIAL PRODUCTS DIVISION, WELLAND, ONTARIO (APPLICANT) V. W. GARRETT ET AL (RESPONDENTS). (WITHDRAWN).

14843-68-U: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. INSPIRATION LIMITED, MINING SERVICES DIVISION (RESPONDENT). (WITHDRAWN).

14871-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. A. PEREIRA (RESPONDENT) (WITHDRAWN).

14872-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. D. LIPRITI AND L. MANDARINO (RESPONDENTS). (WITHDRAWN).

14873-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. R. ALLARD ET AL (RESPONDENTS). (WITHDRAWN).

14874-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. R. PUCKERING (RESPONDENT). (WITHDRAWN).

14875-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. J. JUNIPRO (RESPONDENT). (WITHDRAWN).

14876-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. J. BALDAIA M. MEDEIROS (RESPONDENTS). (WITHDRAWN).

14877-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. J. RODRIGUES AND J. VIVEIROS (RESPONDENTS). (WITHDRAWN).

14878-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. F. AGOSTINO, ET AL (RESPONDENTS). (WITHDRAWN).

14879-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. M. FERREIRA AND J. VIEIRA (RESPONDENTS). (WITHDRAWN).

14881-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. J. BARBOSA ET AL (RESPONDENTS). (WITHDRAWN).

14882-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. V. ASCENZO ET AL (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

JULY

14069-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. BENARNAL COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

14286-67-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. CANUSA COATING SYSTEMS LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 381).

14299-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. BENARNAL COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

14488-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. ONORIO & COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

14489-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. ONORIA & COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

14555-68-U: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION (COMPLAINANT) V. PETER OPEKAN, CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF "ANCHORAGE MOTOR HOTEL" (RESPONDENT). (DISMISSED).

14648-68-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA (COMPLAINANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 393).

14701-68-U: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. HOLLINN CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

14702-68-U: UNITED STEELWORKERS OF AMERICA LOCAL 6519 (COMPLAINANT) V. FOSTER WHEELER LIMITED (RESPONDENT). (WITHDRAWN).

14727-68-U: A.F. GUTSFELD, A. GUTSFELD'S WELDING, EXPERT BUILDUP & HARDFACING 13 LONDON STREET NORTH, HAMILTON ONTARIO (COMPLAINANT) V. INTERNATIONAL HARVESTER COMPANY (HAMILTON WORKS), AND THE UNITED STEELWORKERS OF AMERICA - UNION OFFICERS FROM THE LOCAL 2868 (MR. WM. SCANDLON AND MR. STEWARD COKE) OF THE NAMED UNION (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 394).

14730-68-U: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (COMPLAINANT) V. VAGDEN MILLS LIMITED (RESPONDENT). (WITHDRAWN).

14800-68-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, 482 YORK STREET, LONDON, ONTARIO (COMPLAINANT) V. ST. MARY'S PUBLIC SCHOOL BOARD, BOX 550, ST. MARY'S, ONTARIO (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

14695-68-M: FOOD HANDLERS' LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFFILIATED WITH THE AFL - CIO, AND POWER SUPER MARKETS LIMITED, OSHAWA, ONTARIO (APPLICANTS). (GRANTED).

14754-68-M: UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, LOCAL 733, AND GATES RUBBER OF CANADA LTD. (JOINT APPLICANTS). (DISMISSED).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING JULY

14533-68-M: CIVIC EMPLOYEES' LOCAL UNION #181, CANADIAN UNION OF PUBLIC EMPLOYEES OF THE CITY OF BRANTFORD (APPLICANT) V. SUPERIOR SANITATION SERVICES LIMITED, AND THE CORPORATION OF THE CITY OF BRANTFORD (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 395).

14596-68-M: LAKE OF THE WOODS DISTRICT HOSPITAL, KENORA GENERAL HOSPITAL, ST. JOSEPH HOSPITAL (APPLICANTS) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 822 (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 399).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING JULY

12960-67-M: RETAIL STORE EMPLOYEES UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CENTRAL SUPER-MARKETS LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 402).

13594-67-M: TOBACCO WORKERS' INTERNATIONAL UNION, LOCAL 319 (APPLICANT) V. ROTHMANS OF PALL MALL CANADA LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 406).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

14456-68-M: UNITED STEELWORKERS OF AMERICA (TRADE UNION) V. ALCAN BUILDING PRODUCTS LIMITED (SIDING DIVISION) (SUCCESSOR TO ALCAN BUILDING PRODUCTS LIMITED (WINDOW DIVISION)) (EMPLOYER).

14657-68-M: OTTAWA NEWSPAPER GUILD, LOCAL 205 (TRADE UNION) V. THE OTTAWA CITIZEN (EMPLOYER).

14675-68-M: CANADIAN UNION OF GENERAL EMPLOYEES, LOCAL 500 (TRADE UNION) V. TORONTO YOUNG MEN'S CHRISTIAN ASSOCIATION, CENTRAL BRANCH (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 407).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

14013-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. INDUSTRIAL-MINE INSTALLATIONS LIMITED (RESPONDENT).
(REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 409).

14086-67-R: COMMUNICATIONS WORKERS OF AMERICA, AFL, CIO & CLC (APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V. NORTHERN ELECTRIC EMPLOYEES ASSOCIATION (INTERVENER #1) V. UNITED STEELWORKERS OF AMERICA (INTERVENER #2). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 411).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - PROSECUTION

14703-68-U: JAMES SPEIRS FRANK MAULE (APPLICANTS) V. A.M. WOOLFREY, OSHAWA, GENERAL MOTORS LIMITED, T. H. GLEN, TORONTO, BRITISH AMERICAN OIL CO. LIMITED, K. G. COOKE, HAMILTON, WESTINGHOUSE, L. G. KERR, DRYDEN, DRYDEN PAPER CO. LIMITED, N.H. WAGE, COPPER CLIFF, INTERNATIONAL NICKEL CO. LTD., J. LAWLER, HAMILTON, STEEL CO. OF CANADA: J.L. MCINTYRE, SAULT STE. MARIE, ALGOMA STEEL CO. (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 412).

14704-68-U: JAMES SPEIRS FRANK MAULE (APPLICANTS) V. F. W. MURRAY (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 414).

INDEXED ENDORSEMENTS - CERTIFICATION

13660-67-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. SHELL CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: L. C. ARNOLD AND D. CLARK FOR THE APPLICANT, W. S. COOK, W. HAMBLY AND J. W. SWEENEY FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER R. W. TEAGLE: JULY 11, 1968.

. . .

2. THE APPLICANT IS APPLYING TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR ALL OIL BURNER MECHANICS AND HELPERS EMPLOYED BY THE RESPONDENT AND WORKING OUT OF 3975 KEELE STREET, TORONTO, AND EMPLOYED IN BOARD GEOGRAPHIC AREA No. 8.

3. AT THE ORIGINAL HEARING IN THIS MATTER THE BOARD CONSIDERED THE REPRESENTATIONS OF THE PARTIES CONCERNING THE COMPOSITION OF THE BARGAINING UNIT. THE RESPONDENT TOOK THE POSITION THAT THE APPROPRIATE UNIT SHOULD INCLUDE THE HEATING INSTALLERS IN THE EMPLOY OF THE RESPONDENT AS WELL AS THE OIL BURNER MECHANICS. THE RESPONDENT ALSO SUBMITTED THAT ANY UNIT FOUND TO BE APPROPRIATE SHOULD INCLUDE ITS SERVICE EMPLOYEES WORKING OUT OF ITS PREMISES AT 75 SUMMIT AVENUE IN TORONTO AS WELL AS THOSE WORKING OUT OF THE RESPONDENT'S KEELE STREET LOCATION. THE APPLICANT ALSO CLAIMED THAT PERSONS IN THE EMPLOY OF THE RESPONDENT CLASSIFIED AS INSPECTORS EXERCISED MANAGERIAL FUNCTIONS AND SHOULD NOT BE INCLUDED IN ANY BARGAINING UNIT

ANY BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE. THE RESPONDENT TOOK THE OPPOSITE POSITION WITH REGARD TO THE PERSONS IN ITS EMPLOY WHO ARE CLASSIFIED AS INSPECTORS.

4. HAVING REGARD TO THE POSITIONS TAKEN BY THE PARTIES, THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT ON THE COMPOSITION OF THE BARGAINING UNIT AND THE LIST CONTAINING THE NAMES OF THE EMPLOYEES FILED WITH THE BOARD IN CONNECTION WITH THE APPLICATION. THE BOARD HAS CONSIDERED THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS MADE BY COUNSEL FOR THE APPLICANT AND THE RESPONDENT WITH RESPECT TO THE REPORT AT A HEARING OF THE BOARD HELD FOR THAT PURPOSE.

5. THE RESPONDENT IS ENGAGED IN SELLING FUEL OIL. AS PART OF THIS BUSINESS IT MAINTAINS A SERVICE DEPARTMENT. ORIGINALLY ALL OF THE EMPLOYEES OF THE RESPONDENT'S SERVICE DEPARTMENT WORKED OUT OF PREMISES LOCATED AT 3975 KEELE STREET. ON APRIL 30TH, 1963, THE RESPONDENT ACQUIRED PARKES FUEL OIL SALES LIMITED WHICH WAS A WHOLLY OWNED SUBSIDIARY OF CANADIAN OIL COMPANIES BY TRANSFER OF SHARES. THE PREMISES OF PARKES FUEL OIL SALES LIMITED WERE LOCATED AT 75 SUMMIT AVENUE IN TORONTO. SUBSEQUENT TO THE TRANSFER OF SHARES, THE ASSETS AND GOODWILL OF PARKES FUEL OIL SALES LIMITED WERE TRANSFERRED TO THE RESPONDENT. THE RESPONDENT HAS UTILIZED THE PREMISES AT 75 SUMMIT AVENUE AS A BASE FOR ITS SERVICE OPERATIONS ALONG WITH THE KEELE STREET LOCATION. PARKES FUEL OIL SALES LIMITED SURRENDERED ITS CHARTER EFFECTIVE JUNE 19TH, 1967.

6. SINCE THE RESPONDENT TOOK OVER PARKES FUEL OIL SALES LIMITED IT HAS PRESERVED THE LATTER COMPANY'S TRADE NAME AND TO THE PRESENT TIME IS CARRYING ON ITS BUSINESS FROM THE SUMMIT AVENUE LOCATION UNDER THE NAME PARKES FUEL OIL SALES, DIVISION OF SHELL CANADA LIMITED. THE FORMER CUSTOMERS OF PARKES FUEL OIL SALES LIMITED ARE BILLED UNDER THE ABOVE NAME AND THE TRUCKS SERVICING THOSE CUSTOMERS BEAR SIMILAR IDENTIFICATION. THERE IS NO QUESTION, HOWEVER, THAT THE PERSONS WORKING OUT OF THE SUMMIT AVENUE PREMISES ARE EMPLOYEES OF THE RESPONDENT.

7. THE SERVICE DEPARTMENT IS RESPONSIBLE FOR DOING INSTALLATION AND MAINTENANCE WORK IN RESIDENTIAL, COMMERCIAL AND INDUSTRIAL PREMISES. THE OCCUPATIONAL CLASSIFICATIONS OF EMPLOYEES WORKING IN THE SERVICE DEPARTMENT ARE HEATER INSTALLERS, OIL BURNER MECHANICS AND THEIR HELPERS AND STOCKROOM PERSONNEL. BOTH INSTALLERS AND OIL BURNER MECHANICS WORK OUT OF THE KEELE STREET AND SUMMIT AVENUE LOCATIONS. ALL OF THE STOCKROOM EMPLOYEES ARE AT THE KEELE STREET PREMISES WHERE THE STOCKROOM IS LOCATED. THE PARTIES AGREE THAT THE STOCKROOM EMPLOYEES DO NOT HAVE A COMMUNITY OF INTEREST WITH EITHER THE INSTALLERS OR OIL BURNER MECHANICS AND WOULD NOT BE APPROPRIATE FOR INCLUSION IN A BARGAINING UNIT COMPOSED OF EITHER OF THE LATTER CLASSIFICATIONS OR BOTH IN COMBINATION.

8. THE HEATING INSTALLERS INSTALL OR REPLACE OIL FIRED EQUIPMENT INCLUDING FURNACES. THEY ALSO INSTALL AIR CONDITIONERS, HUMIDIFIERS AND AIR CLEANERS AND DO ALL OF THE SHOP AND FIELD FABRICATION OF DUCT WORK CONNECTED WITH SUCH INSTALLATION. THE INSTALLERS ARE ALL TRAINED SHEET METAL WORKERS AS THE SKILLS OF THIS CRAFT ARE REQUIRED TO FABRICATE THE DUCT WORK. IN THE CASE OF THE INSTALLATION OF A NEW FURNACE THE OIL

BURNER FORMS A PART OF THE SAME UNIT AND COMES AS A SINGLE PACKAGE. WHEN A FURNACE IS INSTALLED, THE ONLY WORK WHICH THE INSTALLERS DO WITH REGARD TO THE OIL BURNER IS TO MOUNT AND BOLT IT TO THE FURNACE.

9. THE OIL BURNER MECHANICS SERVICE, REPAIR AND/OR REPLACE ALL COMPONENT PARTS OF OIL FIRED EQUIPMENT WHICH INCLUDES OIL BURNERS, HOT WATER HEATERS AND FUEL OIL TANKS. THEY ALSO DO THE SAME TYPE OF WORK IN CONNECTION WITH HUMIDIFIERS, DE-HUMIDIFIERS AND AIR CLEANERS. WHEN A FURNACE IS INSTALLED, AFTER THE OIL BURNER HAS BEEN MOUNTED AND BOLTED TO THE FURNACE, IT IS THE JOB OF THE OIL BURNER MECHANICS TO INSTALL THE COPPER PIPE WHICH CONNECTS THE OIL BURNER WITH THE FUEL OIL TANK. THE MECHANICS ALSO INSTALL THE THERMOSTAT. THE OIL BURNER MECHANICS, HOWEVER, DO NONE OF THE ELECTRICAL WORK IN CONNECTING UP THE OIL BURNER MOTOR UNLESS THEY ARE ALSO QUALIFIED ELECTRICIANS.

10. THE ENERGY ACT, 1964 REQUIRES THE RESPONDENT TO BE REGISTERED SINCE THE RESPONDENT IS ENGAGED IN THE BUSINESS OF INSTALLING, REPAIRING AND SERVICING APPLIANCES USING FUEL OIL AS FUEL. ALL OF THE OIL BURNER MECHANICS INCLUDING THE FOUR WHO ARE CLASSIFIED AS INSPECTORS, ARE LICENSED UNDER THE ENERGY ACT AS OIL BURNER MECHANICS (CLASS II). NONE OF THE INSTALLERS, HOWEVER, ARE LICENSED UNDER THE ENERGY ACT. RATHER THEY ARE LICENSED BY THE METROPOLITAN LICENSING COMMISSION AS JOURNEYMEN HEATING INSTALLERS. THE INSTALLERS ARE NOT PERMITTED TO SERVICE OR REPAIR OIL BURNERS. THE OIL BURNER MECHANICS, FOR THEIR PART, ARE NOT ALLOWED TO DO ANY DUCT WORK. THE EMPLOYEES OF THE RESPONDENT IN THE ABOVE TWO CLASSIFICATIONS WORK UNDER SEPARATE SUPERVISION.

11. THE BOARD FINDS THAT WITH RESPECT TO THE SERVICE DEPARTMENT PORTION OF THE RESPONDENT'S OPERATIONS, THE RESPONDENT IS CARRYING ON A BUSINESS IN THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 1(1)(DA) OF THE ACT. (SEE AUTOMATIC FUELS LIMITED, O.L.R.B. MONTHLY REPORT, APRIL 1966, P. 22) THE BOARD ACCORDINGLY FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

12. THE APPLICANT HAS CONFINED ITS APPLICATION TO THOSE OIL BURNER MECHANICS AND THEIR HELPERS WORKING OUT OF THE RESPONDENT'S KEELE STREET PREMISES AND IS ASKING FOR THE EXCLUSION OF THE OIL BURNER MECHANICS AND HELPERS WORKING OUT OF THE RESPONDENT'S SUMMIT AVENUE PREMISES. IN SUPPORT OF ITS REQUEST FOR THE EXCLUSION OF THE OIL BURNER MECHANICS AT THE LATTER LOCATION, COUNSEL FOR THE APPLICANT SUBMITS THAT THE APPLICANT COULD NOT REASONABLY BE EXPECTED TO HAVE BEEN AWARE OF THE EMPLOYEES AT 75 SUMMIT AVENUE SINCE THE RESPONDENT CARRIED ON ITS OPERATIONS FROM THOSE PREMISES UNDER THE NAME OF PARKES FUEL OIL SALES LIMITED. WHILE THE RESPONDENT CONTINUED TO USE THE TRADE NAME PARKES FUEL OIL SALES LIMITED IT WAS CLEARLY IDENTIFIED AS A DIVISION OF SHELL CANADA LIMITED. IN OUR VIEW, BY REASONABLE INQUIRY, THE APPLICANT COULD HAVE LEARNED OF THE EXISTENCE OF THAT PART OF THE RESPONDENT'S SERVICE DEPARTMENT OPERATING OUT OF THE SUMMIT AVENUE PREMISES. IN ANY EVENT, WHERE, AS IN THE INSTANT CASE, THE BOARD FINDS AN APPLICATION FOR CERTIFICATION IS AN APPLICATION WITHIN THE MEANING OF SECTION 92 OF THE ACT, THE BOARD HAS CONSISTENTLY REQUIRED THAT THE UNIT OF EMPLOYEES FOUND TO BE APPROPRIATE

ENCOMPASS ALL OF THOSE EMPLOYEES IN A DESIGNATED GEOGRAPHIC AREA. THE FACT THAT THE EMPLOYEES OF THE RESPONDENT WITH WHOM WE ARE HERE CONCERNED WORK OUT OF TWO PERMANENT LOCATIONS AS OPPOSED TO TEMPORARY CONSTRUCTION SITES, IN OUR OPINION, IS NO REASON TO DEPART FROM THE BOARD'S PAST PRACTICE. SINCE BOTH THE KEELE STREET AND SUMMIT AVENUE PREMISES FALL WITHIN BOARD GEOGRAPHIC AREA No. 8, WE ARE OF THE OPINION THAT ANY UNIT FOUND TO BE APPROPRIATE MUST ENCOMPASS BOTH LOCATIONS.

13. IN THE AUTOMATIC FUELS LIMITED CASE (SUPRA) THE BOARD FOUND THAT ALL EMPLOYEES ENGAGED IN OIL BURNER SERVICE AND INSTALLATION WAS AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING. COUNSEL FOR THE APPLICANT SUBMITS THAT THE ABOVE DECISION MADE IT CLEAR THAT THE UNIT AS THEREIN DESCRIBED HAS REFERENCE SOLELY TO OIL BURNER MECHANICS AND THEIR HELPERS AND DOES NOT INCLUDE HEATER INSTALLERS. COUNSEL FOR THE RESPONDENT ARGUES THAT THE UNIT AS DESCRIBED IN THE ABOVE CASE IS OPEN TO THE INTERPRETATION THAT IT INCLUDES INSTALLERS. WE AGREE WITH THE SUBMISSION OF COUNSEL FOR THE APPLICANT WITH RESPECT TO THE COMPOSITION OF THE BARGAINING UNIT DESCRIBED IN THE AUTOMATIC FUELS LIMITED CASE.

14. COUNSEL FOR THE APPLICANT SUBMITS THAT THE OIL BURNER MECHANICS CONSTITUTE A CRAFT BY REASON OF THE FACT THAT THEY EXERCISE TECHNICAL SKILLS BY REASON OF WHICH THEY ARE DISTINGUISHABLE FROM OTHER EMPLOYEES. COUNSEL FURTHER SUBMITS THAT THE OIL BURNER MECHANICS CONSTITUTE A CRAFT GROUP WITHIN THE MEANING OF SECTION 6(2) OF THE ACT AS THEY COMMONLY BARGAIN SEPARATELY AND APART FROM OTHER EMPLOYEES THROUGH A TRADE UNION THAT ACCORDING TO ESTABLISHED TRADE UNION PRACTICE PERTAINS TO SUCH SKILL, NAMELY THE APPLICANT. IN SUPPORT OF HIS FIRST SUBMISSION COUNSEL ARGUES THAT IN THE AUTOMATIC FUELS LIMITED CASE, THE BOARD, IN EFFECT, RECOGNIZED THE OIL BURNER MECHANICS AND THEIR HELPERS AS CONSTITUTING A CRAFT AND THAT THE BOARD FOUND THE UNIT TO BE APPROPRIATE UNDER SECTION 6(1) RATHER THAN 6(2) OF THE ACT ONLY BECAUSE THE APPLICANT HAS NO HISTORY OF REPRESENTING THE CRAFT. COUNSEL ARGUES THAT THE APPLICANT HAS NOW MET THAT REQUIREMENT OF SECTION 6(2) OF THE ACT. IN SUPPORT OF THIS POSITION COUNSEL CITED THE SPACE CONDITIONING OF CANADA LIMITED CASE, BOARD FILE No. 11650-66-R, AND THE SENTINEL HEATING SERVICE LIMITED CASE, BOARD FILE No. 12135-66-R, IN WHICH THE BOARD CERTIFIED LOCAL 46 OF THE APPLICANT FOR THE SAME UNIT AS IN THE AUTOMATIC FUELS LIMITED CASE.

15. THE BOARD HAS RECOGNIZED THAT OIL BURNER MECHANICS AND HELPERS EXERCISE PARTICULAR SKILLS WHICH DISTINGUISH THEM FROM OTHER EMPLOYEES WHICH MAKES THEM AN APPROPRIATE BARGAINING UNIT BY THEMSELVES. THE FACT, HOWEVER, THAT THE BOARD HAS CERTIFIED A LOCAL OF THE APPLICANT ON THREE OCCASIONS AS BARGAINING AGENT FOR SUCH A UNIT OF EMPLOYEES, IN OUR VIEW, DOES NOT MEET THE REQUIREMENTS OF SECTION 6(2) OF THE ACT. IN ORDER TO ESTABLISH THAT THE APPLICANT IS A TRADE UNION THAT PERTAINS TO OIL BURNER MECHANICS AND HELPERS WITHIN THE MEANING OF SECTION 6(2), THE BOARD REQUIRES EVIDENCE THAT THE APPLICANT HAS ENTERED INTO COLLECTIVE

AGREEMENTS, THE SCOPE OF WHICH COVERS THIS PARTICULAR GROUP OF EMPLOYEES OR OTHERWISE HAS BARGAINED FOR THEM SEPARATE AND APART FROM OTHER EMPLOYEES. NO SUCH EVIDENCE IS BEFORE THE BOARD. WE ACCORDINGLY, AT THIS TIME, ARE ONLY PREPARED TO FIND THAT OIL BURNER MECHANICS AND THEIR HELPERS ARE AN APPROPRIATE UNIT UNDER SECTION 6(1) OF THE ACT.

16. EVIDENCE AS TO THE DUTIES AND RESPONSIBILITIES OF THE FOUR PERSONS CLASSIFIED AS INSPECTORS IS CONTAINED IN THE REPORT OF THE EXAMINER. AT THE HEARING ON THE REPORT COUNSEL FOR THE APPLICANT SUBMITTED THAT BASED ON THE EVIDENCE THE INSPECTORS EXERCISE BOTH MANAGERIAL FUNCTIONS AND ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND THEREFORE THEY SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT. COUNSEL FOR THE RESPONDENT MADE OPPOSITE SUBMISSIONS. THERE ARE SOME DISCREPANCIES IN THE EVIDENCE OF THE INSPECTORS AS TO THE DEGREE OF THEIR AUTHORITY OVER THE OIL BURNER MECHANICS. THE EVIDENCE OF A. E. SAVAGE IN PARTICULAR INDICATES GREATER RESPONSIBILITY THAN DOES THE EVIDENCE OF V. J. CASSIDY, C. F. EDDY AND EARL FENTON. HAVING REGARD TO ALL OF THEIR EVIDENCE, HOWEVER, AND HAVING CONSIDERED THE REPRESENTATIONS OF COUNSEL, THE BOARD FINDS THAT AS AN OCCUPATIONAL CLASSIFICATION THE INSPECTORS DO NOT EXERCISE MANAGERIAL FUNCTIONS NOR ARE THEY EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THE BOARD ACCORDINGLY FINDS THAT EMPLOYEES IN THE CLASSIFICATION OF INSPECTOR ARE INCLUDED IN THE BARGAINING UNIT.

17. IN LIGHT OF THE REPRESENTATIONS THAT WERE MADE BY THE PARTIES WITH REGARD TO THE COMPOSITION OF THE BARGAINING UNIT AS DESCRIBED IN THE AUTOMATIC FUELS LIMITED CASE, FOR PURPOSES OF CLARITY THE BOARD DEEMS IT ADVISABLE TO DESCRIBE THE UNIT IN THE MANNER SOUGHT BY THE APPLICANT. THE BOARD ACCORDINGLY FINDS THAT ALL OIL BURNER MECHANICS AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

18. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 27TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

19. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

20. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

21. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER E. BOYER:

JULY 11, 1968.

I AGREE WITH THE DECISION OF THE MAJORITY EXCEPT AS IT RELATES TO THEIR FINDING WITH REGARD TO INSPECTORS. BASED ON THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, I FIND THAT THE PERSONS EMPLOYED IN THE CLASSIFICATION OF INSPECTOR EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND THEREFORE SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT.

14067-67-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796
(APPLICANT) v. THE QUEEN ELIZABETH HOSPITAL, TORONTO (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: J. SULLIVAN FOR THE APPLICANT AND
F. G. HAMILTON, P. SINGER FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 24, 1968.

1. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MAY 10TH, 1968, IN THIS MATTER, A HEARING WAS HELD BY THE BOARD TO HEAR THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE EVIDENCE CONTAINED IN THE SAID REPORT.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. IT APPEARS FROM THE EXAMINER'S REPORT THAT THE RESPONDENT EMPLOYS FOUR PERSONS CLASSIFIED AS STATIONARY ENGINEERS AND ONE PERSON WHO IS PRIMARILY ENGAGED AS THEIR HELPER IN THE BOILER ROOM OF THE RESPONDENT. IN ADDITION TO THESE PERSONS, THE APPLICANT CONTENDS THAT THERE ARE FOUR OTHER STATIONARY ENGINEERS, ONE HELPER AND ONE HELPER/TRAINEE EMPLOYED BY THE RESPONDENT WHO SHOULD ALSO BE INCLUDED IN

THE BARGAINING UNIT. THE RESPONDENT TAKES THE POSITION THAT WITH THE EXCEPTION OF THE HELPER/TRAINEE THE OTHER EMPLOYEES ARE ENGAGED IN MAINTENANCE WORK AND THEREFORE DO NOT FALL WITHIN THE SCOPE OF THE DESCRIPTION OF THE REGULAR CRAFT BARGAINING UNIT. THE HELPER/TRAINEE IS NOT AN EMPLOYEE OF THE RESPONDENT BUT IS ON A REHABILITATION TRAINING PROGRAMME THROUGH THE AUSPICES OF THE WORKMEN'S COMPENSATION BOARD. THE APPLICANT SUBMITS THAT THESE SIX PERSONS EXERCISE TECHNICAL SKILLS AND HAVE A COMMUNITY INTEREST WITH THE STATIONARY ENGINEERS. FURTHER THEY HAVE COMMON SUPERVISION AND ARE INTERCHANGEABLE WITHIN THE GROUPS.

5. IT IS THE STATED POLICY OF THE BOARD THAT THE STANDARD CRAFT UNIT OF EMPLOYEES IN A BOILER ROOM OR POWER HOUSE IS DESCRIBED AS "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM...". THE QUESTION BEFORE THE BOARD IS WHETHER THE SIX EMPLOYEES CHALLENGED BY THE APPLICANT SHOULD BE INCLUDED IN THE BARGAINING UNIT SET OUT ABOVE. THE EVIDENCE WITH RESPECT TO ADAMS, BOONE, COMETE, VANDERSTELT AND DIAS ESTABLISHES THAT THEY ARE PERFORMING THE DUTIES OF MAINTENANCE MEN THROUGHOUT THE HOSPITAL. WHILE THEY CARRY OUT SOME OF THEIR TASKS IN THE BOILER ROOM SUCH ARE RESTRICTED TO THE MAINTENANCE OF THE PLANT AS CONTRASTED WITH THE OPERATIONS OF IT. DIAS IS CLASSIFIED AS A MAINTENANCE MAN #2 AND EXPECTS TO TAKE AN ELECTRICIAN'S EXAMINATION. HE WORKED ONLY ONE DAY IN THE BOILER ROOM DURING AN ICE STORM WHEN MOST OF THE STAFF WORKED THERE. THE OTHERS HOLD STATIONARY ENGINEERS' CERTIFICATES BUT ARE ALL WORKING ON MAINTENANCE DUTIES, IN CONJUNCTION WITH OTHER PERSONNEL IN THE HOSPITAL AS WELL AS WITH THE STATIONARY ENGINEERS IN THE BOILER ROOM. COMETE SAID THAT HE HAD NOT STOOD A REGULAR SHIFT IN THE BOILER ROOM SINCE 1955. THE ENGINEERS ON THE BOILERS WORK THREE SHIFTS BUT THESE EMPLOYEES WORK ONLY DAYS. BOONE STATED THAT HE HAS CARRIED OUT GENERAL MAINTENANCE WORK THROUGHOUT THE HOSPITAL AND PARTICULARLY BOILER AND PUMP MAINTENANCE BUT HAD NOT DONE ANY SHIFT WORK ON THE BOILERS BETWEEN DECEMBER 1ST AND JANUARY 20TH, 1968, NOR HAD HE WORKED AS A FRIDAY RELIEF OPERATOR. HE ALSO WORKED ON THE FEEDWATER TREATMENT BUT STATED THAT THIS COULD BE DONE BY SOMEONE OTHER THAN A STATIONARY ENGINEER. VANDERSTELT ALSO WORKS ON MAINTENANCE THROUGHOUT THE HOSPITAL INCLUDING THE BOILER ROOM AREA. HE DID NOT WORK A WHOLE SHIFT AS A SHIFT ENGINEER BETWEEN DECEMBER 1ST, 1967 AND JANUARY 20TH, 1968 EXCEPT AS TO PACKING THE VALVES WHICH IS PART OF MAINTENANCE.

6. THESE EMPLOYEES HAVE COMMON SUPERVISION WITH THE BOILER ROOM ENGINEERS AND HAVE SIMILAR FACILITIES. THE EVIDENCE DOES NOT ESTABLISH HOWEVER THAT THERE IS ANY INTERCHANGE OF PERSONNEL BETWEEN THE TWO GROUPS. WHILE THEY DO HAVE CERTAIN TECHNICAL SKILLS, SUCH SKILLS ARE NOT USED WITH RESPECT TO THE OPERATION OF THE BOILERS. THEIR DUTIES ARE NOT CONFINED TO THE BOILER ROOM AND THEIR SERVICES ARE USED THROUGHOUT THE HOSPITAL IN A VARIETY OF MAINTENANCE WORK WHICH IS DONE IN CONJUNCTION WITH OTHER PERSONNEL OF THE RESPONDENT. IN VIEW

OF THE ABSENCE OF INTERCHANGE BETWEEN THE BOILER ROOM ENGINEERS AND THE MAINTENANCE EMPLOYEES AND THE FACT THAT THEY HAVE SEPARATE FUNCTIONS AND WORK FOR A GREAT DEAL OF THE TIME APART FROM EACH OTHER, EVEN THOUGH FOUR OF THE FIVE ARE TRAINED AS STATIONARY ENGINEERS, THERE IS NO FUNCTIONAL COHERENCE BETWEEN THE MAINTENANCE MEN AND THE BOILER ROOM ENGINEERS. THE APPLICANT HAS FAILED TO ESTABLISH THAT PERSONS EMPLOYED BY THE RESPONDENT AS MAINTENANCE MEN ARE PART OF THE APPLICANT'S REGULAR CRAFT UNIT. THE BOARD THEREFORE DECLARES THAT C. ADAMS, K. BOONE, L. COMETE, WM. VANDERSTELT, C. DIAS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 3 ABOVE.

7. THE EVIDENCE, IN PART, WITH RESPECT TO MR. TIBOR SCHMELLAR ESTABLISHES THAT HE HAD BEEN WORKING IN THE RESPONDENT'S BOILER ROOM FOR ABOUT 9 MONTHS AS A HELPER/TRAINEE TO PREPARE HIMSELF TO TAKE EXAMINATIONS TO BECOME A STATIONARY ENGINEER. PRIOR TO HIS RELATIONSHIP AT THE HOSPITAL HE HAD WORKED AT DYE COATING MACHINERY OPERATIONS AND HAD SUFFERED AN INJURY TO HIS SPINE. BECAUSE OF THIS HE COULD NOT LIFT ANYTHING OF APPRECIABLE SIZE OR WEIGHT OR CLIMB A LADDER. THE WORKMEN'S COMPENSATION BOARD, AS PART OF ITS REHABILITATION AND TRAINING PROGRAMME, ARRANGED WITH THE RESPONDENT FOR HIS TRAINING IN ITS BOILER ROOM. SCHMELLAR RECEIVES COMPENSATION FROM THE BOARD AND IS PAID IN ADDITION THE SUM OF \$1.00 PER DAY BY THE RESPONDENT AS A TRAVELLING ALLOWANCE. HE REPORTS ON HIS PROGRESS TO ONE OF THE REHABILITATION OFFICERS OF THE WORKMEN'S COMPENSATION BOARD ABOUT ONCE A MONTH AND AS WELL CONTINUES REGULAR VISITS TO HIS DOCTOR. HE STATED THAT WHEN HE WENT TO THE RESPONDENT'S HOSPITAL HE KNEW THAT HE WAS NOT AN EMPLOYEE BUT WAS THERE TO LEARN A TRADE WITHIN A CERTAIN LENGTH OF TIME, I.E. FIFTY-TWO WEEKS.

8. IN VIEW OF THE SPECIAL ARRANGEMENTS MADE BY THE WORKMEN'S COMPENSATION BOARD WITH THE RESPONDENT AS TO SCHMELLAR'S TRAINING UNDER A REHABILITATION PROGRAMME WE FIND THAT HE IS NOT AN EMPLOYEE OF THE RESPONDENT AND IS NOT THEREFORE INCLUDED IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 3 ABOVE.

9. HAVING REGARD TO THE FOREGOING, THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON JANUARY 29TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. THE APPLICATION IS THEREFORE DISMISSED.

14177-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED (RESPONDENT) V. A. & M. EMPLOYEES' ASSOCIATION (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. B. WATERMAN, DANIEL DEAN AND
WILLIAM FRASER FOR THE APPLICANT, A. J. CLARK AND K. L. HAMER
FOR THE RESPONDENT, WILLIAM J. HEMMERICK, Q.C., FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 24, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN AND THE EMPLOYEES IN THE BARGAINING UNIT WERE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT. FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE THE APPLICANT CHARGED THAT THE INTERVENER HAD ENGAGED IN UNFAIR CONDUCT AND VIOLATED THE 72 HOUR QUIET PERIOD PRECEDING THE TAKING OF THE VOTE.
2. HAVING REGARD FOR THE DECISION OF THE BOARD IN KRALINATOR FILTERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1966, P. 312, AND FOR REASONS TO BE GIVEN IN WRITING, THE BOARD FINDS THAT THE ACTIVITIES OF THE INTERVENER CONCERNING WHICH THE APPLICANT HAS MADE ITS ALLEGATIONS ARE NOT CONTRARY TO THE LABOUR RELATIONS ACT AND ARE NOT GROUNDS FOR HOLDING THAT THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER SHOULD BE DECLARED VOID. THE REQUEST OF THE APPLICANT THAT A NEW REPRESENTATION VOTE SHOULD BE TAKEN IN THIS MATTER IS THEREFORE DENIED. BOARD MEMBER E. BOYER RESERVES HIS RIGHT TO DISSENT UNTIL SUCH TIME AS HE HAS HAD THE OPPORTUNITY TO STUDY THE BOARD'S WRITTEN REASONS.
3. ON THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.
4. THE APPLICATION IS THEREFORE DISMISSED.
5. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.
6. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

(WRITTEN REASONS TO BE ISSUED).

14273-67-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC
(APPLICANT) V. VERSAFOOD SERVICES LIMITED INSTITUTIONS DIVISION UNIVERSITY
OF GUELPH (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: H. BUCHANAN AND R. HIGSON FOR THE APPLICANT,
B.M.W. PAULIN, Q.C., AND R. F. KING FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 4, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF HEAD CHEFS. FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED MAY 17TH, 1968, AS AMENDED BY A SUPPLEMENTARY REPORT OF THE EXAMINER DATED MAY 30TH, 1968, THIS MATTER WAS LISTED FOR HEARING AT THE REQUEST OF THE RESPONDENT TO HEAR THE REPRESENTATIONS OF THE PARTIES AS TO THE CONCLUSIONS THE BOARD SHOULD REACH ON THE BASIS OF THE EXAMINER'S REPORT. THE RESPONDENT ALSO REQUESTED THE BOARD TO HEAR ADDITIONAL EVIDENCE OF THE PERSONS EXAMINED IN ORDER TO PERMIT THE BOARD TO RESOLVE THE CONFLICT IN EVIDENCE WHICH THE RESPONDENT ALLEGED APPEARS ON THE FACE OF THE EXAMINER'S REPORT.

2. IN THIS CASE, THE BOARD IS REQUIRED TO MAKE A DETERMINATION WITH RESPECT TO THE CLASSIFICATION OF HEAD CHEF. IT IS TO BE NOTED THAT THE PERSONS EMPLOYED BY THE RESPONDENT IN THAT CLASSIFICATION ARE ALL ENGAGED IN THE RESPONDENT'S RESTAURANT AND CAFETERIA OPERATIONS. SINCE THE DUTIES OF THE PERSONS IN QUESTION ARE EXERCISED WITH RESPECT TO SIMILAR OPERATIONS, THE BOARD IS OF OPINION THAT THE INDIVIDUAL INCUMBENTS OF THE CLASSIFICATION SHOULD NOT BE TREATED SEPARATELY. IN OTHER WORDS, UNLESS THERE IS EVIDENCE TO ESTABLISH OTHERWISE, ALL OF THE PERSONS EMPLOYED IN THE CLASSIFICATION OF HEAD CHEF SHOULD EITHER BE INCLUDED OR EXCLUDED FROM THE BARGAINING UNIT AS A CLASS.

3. AS INDICATED AT THE HEARING, THE BOARD ACKNOWLEDGED THAT THERE WAS A DIFFERENCE IN THE TESTIMONY OF THE VARIOUS INCUMBENTS OF THE CLASSIFICATION OF HEAD CHEF. IT WAS APPARENT THAT SOME OF THE PERSONS EXAMINED MAY HAVE OVERSTATED THEIR DUTIES AND RESPONSIBILITIES WHILE OTHERS OBVIOUSLY WERE DOWNGRADING THEM.

4. WHERE SUCH CONFLICT EXISTS, IT IS RECOGNIZED THAT THE BOARD'S TASK IN ASSESSING THE CREDIBILITY OF THE WITNESSES IS MADE MORE DIFFICULT SINCE ONE OF THE CRITERIA OF ASSESSING CREDIBILITY IS ABSENT. IN DEALING WITH EVIDENCE CONTAINED IN AN EXAMINER'S REPORT, THE BOARD DOES NOT HAVE THE OPPORTUNITY TO OBSERVE THE DEMEANOUR OF THE WITNESSES IN THE WITNESS BOX. HOWEVER, WHILE THE BOARD'S TASK IS NOT MADE EASY, AS A RESULT OF THE BOARD'S PROCEDURE IN OBTAINING EVIDENCE THROUGH AN EXAMINER, IF AN EXAMINATION IS PROPERLY CONDUCTED AND THE WITNESSES ARE THOROUGHLY EXAMINED AND CROSS-EXAMINED, THE TASK OF ASSESSING

CREDIBILITY IS NOT MADE IMPOSSIBLE BECAUSE OF THE NATURE OF THE REPORT OF THE EXAMINER. IN THE INSTANT CASE, IT WAS APPARENT THAT THE SECOND WITNESS EXAMINED TENDED TO UNDERPLAY HIS DUTIES AND RESPONSIBILITIES. HOWEVER, THIS WAS OVERCOME BY PERSISTENT QUESTIONING WHICH ESTABLISHED THAT THIS WITNESS DID, IN FACT, EXERCISE THE POWER TO REPRIMAND EMPLOYEES AND TO MAKE EFFECTIVE RECOMMENDATIONS WHICH HE "WOULD EXPECT" THE RESPONDENT TO ACT ON.

5. AS INDICATED EARLIER, THE BOARD IS OF OPINION THAT WHERE SEVERAL PERSONS ARE EMPLOYED IN THE SAME CLASSIFICATION WITH RESPECT TO SIMILAR OPERATIONS, AS IN THE INSTANT CASE, IT IS IN THE INTEREST OF GOOD LABOUR RELATIONS TO TREAT EACH INCUMBENT OF THE CLASSIFICATION IN THE SAME WAY. THE EXAMINER'S REPORT IN THIS CASE CLEARLY ESTABLISHED, BY A PREPONDERANCE OF EVIDENCE, THAT PERSONS EMPLOYED BY THE RESPONDENT AS HEAD CHEFS EXERCISE THE DUTIES AND RESPONSIBILITIES WHICH, IN THE BOARD'S EXPERIENCE, ARE COMMONLY ASSOCIATED WITH HEAD CHEFS WHOM THE BOARD HAS FOUND EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THE CLASSIFICATION OF HEAD CHEF IS COMMONLY USED TO DENOTE A MANAGERIAL POSITION AND THIS FACT IS UNDERSTOOD BY THE INCUMBENTS OF THE CLASSIFICATION IN THE INSTANT CASE, AS IS INDICATED BY THE EVIDENCE OF ONE OF THE PERSONS WHO TESTIFIED CONCERNING HIS POWER TO MAKE EFFECTIVE RECOMMENDATIONS WITH RESPECT TO DISCIPLINARY MATTERS. THIS WITNESS TESTIFIED THAT IF HE MADE A RECOMMENDATION ABOUT DISCIPLINE HE WOULD EXPECT THAT THIS RECOMMENDATION WOULD BE FOLLOWED BECAUSE IF IT WERE NOT HE WAS "NO LONGER A CHEF; JUST A COOK."

6. WHEN THE CRITERIA ENUNCIATED BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379, ARE APPLIED TO THE FACTS OF THIS CASE, THE BOARD FINDS THAT PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD CHEFS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT.

7. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

8. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT THE UNIVERSITY OF GUELPH, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, DIETITIANS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PERSONS EMPLOYED ON A TEMPORARY OR CASUAL BASIS ARE NOT INCLUDED IN THE BARGAINING UNIT AND THAT THE SUPERVISOR OF PORTERS AND THE SUPERVISOR OF INVENTORY AND STORES ARE NOT INCLUDED IN THE BARGAINING UNIT.

10. FOR THE PURPOSES OF CLARITY AND FOR THE REASONS SET OUT ABOVE, THE BOARD FURTHER FINDS THAT PERSONS CLASSIFIED BY THE RESPONDENT AS HEAD CHEFS EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MARCH 18TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

(WRITTEN REASONS)

14321-67-R: UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO, CLC (APPLICANT) V. CANADIAN PITTSBURGH INDUSTRIES LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND O. HODGES.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER H. F. IRWIN:

JULY 3, 1968.

1. BY THE BOARD'S DECISION DATED APRIL 30TH, 1968, THE APPLICANT WAS CERTIFIED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT WITH CERTAIN EXCEPTIONS SET OUT IN PARAGRAPH 2 OF THE DECISION. IN DEALING WITH THE RESPONDENT'S REQUEST THAT STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD BE EXCLUDED FROM THE UNIT, COUNSEL FOR THE RESPONDENT ADVISED THE BOARD THAT THE RESPONDENT HAD AT THE TIME OF THE APPLICATION, IN FACT, ENGAGED TWO STUDENTS FOR SUMMER EMPLOYMENT WHO WOULD REPORT FOR WORK AT THE COMMENCEMENT OF THE VACATION PERIOD.

2. THE GENERAL POLICY OF THE BOARD IS TO EXCLUDE STUDENTS FROM THE BARGAINING UNIT AT THE REQUEST OF THE OTHER PARTY WHERE THE COMPANY IS PRESENTLY EMPLOYING STUDENTS OR HAS HAD STUDENTS IN ITS EMPLOY IN THE PAST AND EXPECTS TO DO SO IN THE FUTURE. WHERE STUDENTS ARE NOT PRESENTLY EMPLOYED, THE BOARD MAKES INQUIRIES OF THE PARTIES AS TO THE EMPLOYMENT HISTORY AND THE FUTURE INTENTION OF EMPLOYING STUDENTS AND USUALLY ACCEPTS THEIR REPRESENTATIONS ON WHICH THE BOARD MAKES ITS DECISION. WITH RESPECT TO NEW PLANTS THE BOARD'S STATED POLICY ON THE EXCLUSION OF STUDENTS IS AS FOLLOWS:

THE FACT THAT A PLANT HAS BEEN IN OPERATION A SHORT TIME AND HAS NOT YET REACHED THE STAGE

OF DEVELOPMENT OR THE PERIOD OF THE YEAR WHEN IT IS LIKELY TO EMPLOY PART-TIME EMPLOYEES OR STUDENTS IS NOT IN ITSELF A SUFFICIENT CONSIDERATION TO WARRANT A DEPARTURE FROM THE GENERAL PRINCIPLE THAT SUCH CLASSIFICATIONS ARE TO BE INCLUDED IN A BARGAINING UNIT WHERE THE EMPLOYER HAS NOT HAD PERSONS IN SUCH CLASSIFICATIONS IN HIS EMPLOY PRIOR TO OR AT THE TIME OF THE APPLICATION.

3. IN THE HERSHEY CHOCOLATE OF CANADA CASE, BOARD FILE 5317-62-R, A SIMILAR QUESTION AROSE AS TO THE EXCLUSION OF STUDENTS FROM A BARGAINING UNIT IN A NEW PLANT. THE RESPONDENT IN THAT CASE SUBMITTED THAT IT EMPLOYED STUDENTS IN ITS OTHER PLANTS AND INTENDED TO EMPLOY STUDENTS IN THIS PLANT WHEN THE VACATION PERIOD COMMENCED AND ON THAT BASIS STUDENTS EMPLOYED DURING THE VACATION PERIOD WERE EXCLUDED BY THE BOARD FROM THE BARGAINING UNIT. IT IS OUR OPINION THAT THE BOARD POLICY CONCERNING THE EXCLUSION OF STUDENTS IN NEW PLANTS MUST BE CONSIDERED IN THE LIGHT OF THIS CASE.

4. FURTHER, IT IS OUR OPINION THAT THE INSTANT CASE IS DISTINGUISHABLE ON ITS FACTS FROM BOTH THE HERSHEY CHOCOLATE OF CANADA CASE, [SUPRA] AND THE BOARD POLICY SET OUT ABOVE SINCE IN THIS CASE THE RESPONDENT HAS IN FACT HIRED OR ENGAGED STUDENTS AS OF THE DATE OF THE APPLICATION. WE, THEREFORE, CONCLUDED IN THE CIRCUMSTANCES OF THIS CASE THAT STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.

DECISION OF BOARD MEMBER O. HODGES:

JULY 3, 1968.

WHILE I CONCUR WITH THE ISSUANCE OF A CERTIFICATE TO THE APPLICANT, I DISSENT FROM THE DESCRIPTION OF THE BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE MAJORITY. I WOULD HAVE INCLUDED STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD.

THE POLICY OF THE BOARD IN THIS REGARD WAS SET OUT IN THE POST PRINTING COMPANY LTD. CASE, O.L.R.B. MONTHLY REPORTS, MARCH 1966, P. 930-931, WHERE THE BOARD STATED:

5. THE LISTS OF EMPLOYEES FILED BY THE RESPONDENT INDICATES THAT AT THE TIME THE APPLICATION WAS MADE THERE WERE NO PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND THERE WERE NO STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD. THE BOARD HAS NO EVIDENCE BEFORE IT FROM WHICH IT COULD FIND THERE IS A HISTORY OF THE RESPONDENT EMPLOYING PERSONS IN THE CLASSIFICATIONS WHICH THE RESPONDENT NOW SEEKS TO EXCLUDE.

(THE EMPHASIS IS MINE)

7. IT IS THE BOARD'S USUAL PRACTICE TO EXCLUDE 24 HOUR PERSONS AND STUDENTS FROM THE FULL TIME BARGAINING UNIT IF THE EMPLOYER HAS A HISTORY OF EMPLOYING SUCH PERSONS WHEN ONE OF THE PARTIES MAKES A REQUEST FOR SUCH AN EXCLUSION.

(THE EMPHASIS IS MINE)

IT WILL THUS BE SEEN THAT THERE ARE TWO NECESSARY INGREDIENTS BEFORE THE BOARD WILL EXCLUDE, AT THE REQUEST OF ONE OF THE PARTIES, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD--HISTORY OF EMPLOYMENT AND EVIDENCE THEREOF.

CONSIDERING, FOR THE MOMENT, THE FIRST OF THESE TWO INGREDIENTS. SINCE THE RESPONDENT COMMENCED ITS OPERATIONS AS RECENTLY AS OCTOBER OF LAST YEAR, THERE CAN OBVIOUSLY BE NO HISTORY OF HIRING STUDENTS DURING THE SCHOOL VACATION PERIOD. COUNSEL FOR THE RESPONDENT STATED THAT THE RESPONDENT "HAS ENGAGED A COUPLE OF STUDENTS FOR SUMMER VACATION RELIEF WORK". A STATEMENT OF FUTURE INTENTIONS IS HARDLY A HISTORY OF EMPLOYING STUDENTS DURING THE SCHOOL VACATION PERIOD.

ACCORDINGLY, HOLDING THAT FUTURE INTENTION IS NOT HISTORY, I WOULD HAVE NOT EXCLUDED STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD FROM THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN THE APPLICATION.

14575-68-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T., (APPLICANT) V. BERTRAND & FRERE CONSTRUCTION CO. LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: JOHN OSLER, THOMAS LEES FOR THE APPLICANT; JOHN G. DUNLAP FOR THE RESPONDENT; PIERRE GENEST, DENNIS BROWN, J. M. DAOUST FOR THE GROUP OF EMPLOYEES.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER H. F. IRWIN:

JULY 18, 1968.

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2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THERE WAS FILED WITH THE BOARD IN THIS MATTER A DOCUMENT IN OPPOSITION TO THE APPLICATION SIGNED BY 10 OF THE 12 EMPLOYEES IN THE BARGAINING UNIT, SEVEN OF WHOM WERE CLAIMED BY THE APPLICANT IN MEMBERSHIP. ACCORDINGLY, THE BOARD INQUIRED INTO THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENT. THE EVIDENCE OF MR. JEAN MARIE DAoust, A BULLDOZER OPERATOR EMPLOYED BY THE RESPONDENT WAS THAT HE OBTAINED THE NOTICE TO EMPLOYEES, WHICH HAD BEEN FORWARDED TO THE RESPONDENT BY THE REGISTRAR OF THE BOARD, FROM THE RESPONDENT'S POSTAL CLERK. HE THEN, ON HIS OWN ACCORD, POSTED THE NOTICE IN THE RESPONDENT'S OFFICE AND GARAGE. AFTER INQUIRING FROM ANOTHER EMPLOYEE AS TO THE NAME OF A LAWYER, HE CONTACTED BY TELEPHONE MR. GENEST WITH RESPECT TO THE APPLICATION WHO ADVISED HIM OF THE WORDING THAT HE SHOULD USE ON A PETITION. MR. DAoust THEN TYPED THE DOCUMENT IN HIS HOME WHICH IS A TRAILER OWNED BY THE RESPONDENT LOCATED ON THE RESPONDENT'S PROPERTY AND SUPPLIED TO MR. DAoust FOR HIS OWN USE. HE THEN ASKED THE EMPLOYEES TO SIGN THE DOCUMENT WHICH THEY DID IN HIS TRAILER DURING THE MORNING AND AFTERNOON OF MAY 14TH. AFTER OBTAINING THE SIGNATURES HE FORWARDED THE DOCUMENT TO HIS LAWYER.

4. THE BOARD, IN CASES OF THIS NATURE, CONSIDERS WHETHER THE EMPLOYEES WHO WERE INVOLVED IN THE PETITION HAVE VOLUNTARILY EXPRESSED IN WRITING THEIR TRUE WISHES AND WERE NOT IMPROPERLY INFLUENCED IN SO DOING BY THEIR EMPLOYER. THE EVIDENCE BEFORE THE BOARD IN THIS MATTER IN OUR OPINION, DOES NOT DISCLOSE ANY IMPROPER INFLUENCE OR INTERFERENCE BY THE RESPONDENT IN REGARD TO THE EMPLOYEES WHO SIGNED THE DOCUMENT, SO AS TO DESTROY ITS PURPOSE.

AT THE CONCLUSION OF THE EVIDENCE, COUNSEL FOR THE APPLICANT SUBMITTED THAT HE ON BEHALF OF THE APPLICANT WAS FILING AN APPLICATION FOR RELIEF PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT AGAINST THE RESPONDENT, ALLEGATIONS IN WHICH, IF SUBSTANTIATED, MIGHT AFFECT THE BOARD'S CONSIDERATION OF THE PETITION IN THIS MATTER. HE, THEREFORE, REQUESTED THE BOARD TO POSTPONE ITS DECISION PENDING THE CONCLUSION OF THAT APPLICATION. THERE WERE NO CHARGES FILED WITH RESPECT TO THE PETITION IN THE INSTANT MATTER, ALTHOUGH IT WAS QUITE OPEN FOR THE APPLICANT TO DO SO. THE BOARD HAS BEFORE IT, FOR ITS CONSIDERATION, ALL OF THE EVIDENCE RELATING TO THE PETITION. IT SHOULD ALSO BE NOTED THAT THE APPLICATION FOR RELIEF PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE ACT, IF IN FACT IT COMES ON FOR HEARING, MAY WELL BE DEALT WITH BY A DIFFERENTLY CONSTITUTED PANEL OF THIS BOARD. IN THESE CIRCUMSTANCES, WE ARE OF THE OPINION THAT IT WOULD SERVE NO USEFUL PURPOSE FOR POSTPONING THE MAKING OF A DECISION IN THIS MATTER.

6. WE ARE, THEREFORE, SATISFIED THAT THE DOCUMENT SUBMITTED TO THE BOARD IN THIS MATTER IN OPPOSITION TO THE APPLICATION WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 16TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER P. J. O'KEEFFE:

JULY 18, 1968.

I DISSENT.

I WOULD NOT GIVE WEIGHT TO THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION BECAUSE I COULD NOT ACCEPT THE TESTIMONY OF MR. JEAN MARIE DAoust WITH RESPECT TO ITS ORIGINATION AND CIRCULATION. MR. DAoust BY HIS OWN ADMISSION POSTED ON THE EMPLOYER'S NOTICE BOARDS THE NOTICE OF THE APPLICATION FOR CERTIFICATION, THIS ACT WAS DONE OF HIS OWN ACCORD AND ON HIS OWN INITIATIVE, THE POSTING OF THE BOARD'S NOTICE IN THIS MATTER IS A MANAGEMENT RESPONSIBILITY AND THE PERSON CARRYING OUT THIS MANAGEMENT RESPONSIBILITY COULD ONLY BE ASSOCIATED IN THE EMPLOYEES MIND WITH MANAGEMENT. THE SUBSEQUENT ORIGINATION AND CIRCULATION OF THE ANTI UNION PETITION BY MR. DAoust IN WHICH HE OBTAINED EMPLOYEES SIGNATURES COULD NOT BE SAID TO FREELY EXPRESS THE WISHES OF THE AFFECTED EMPLOYEES. I WOULD CERTIFY THE APPLICANT UNION WITHOUT THE NECESSITY OF TAKING A REPRESENTATION VOTE.

14711-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. LAKEWOOD FOREST PRODUCTS (EASTERN) LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., E. CHAPMAN AND J. C. HORAN FOR THE APPLICANT, G. E. JULIAN, A. CORNELIS AND A. C. HAANSCHOTEN FOR THE RESPONDENT.

DECISION OF THE BOARD:

JULY 12, 1968.

2. THIS IS AN APPLICATION FOR CERTIFICATION MADE JUNE 10TH, 1968, IN WHICH THE RESPONDENT ALLEGED THAT THE APPLICATION WAS UNTIMELY DUE TO THE FACT THAT THE RESPONDENT WAS A PARTY TO A COLLECTIVE AGREEMENT WITH LAKEWOOD FOREST PRODUCTS (EASTERN) LTD. SHOP UNION WHICH CAME INTO EFFECT ON MAY 1ST, 1965 AND WAS TO CONTINUE IN EFFECT UNTIL APRIL 30TH, 1968, AND FROM YEAR TO YEAR THEREAFTER "UNLESS EITHER PARTY DESIRES TO CHANGE OR TERMINATE THE AGREEMENT, IN WHICH CASE THE PARTY DESIRING THE CHANGE OR TERMINATION SHALL NOTIFY THE OTHER PARTY IN WRITING SIXTY (60) DAYS PRIOR TO THE END OF THAT PARTICULAR YEAR THAT SUCH IS ITS DESIRE. EITHER PARTY OPENING THE AGREEMENT IN THE MANNER PROVIDED ABOVE SHALL NOTIFY THE OTHER PARTY IN WRITING AS TO THE CHANGES DESIRED." THE EVIDENCE ESTABLISHED THAT NEITHER PARTY TO THE AGREEMENT SERVED NOTICE ON THE OTHER OF ITS DESIRE TO CHANGE OR TERMINATE THE AGREEMENT.

3. THE RESPONDENT IN THIS MATTER WAS FORMERLY KNOWN AS HUNTER VENEERS LIMITED AND BY SUPPLEMENTARY LETTERS PATENT DATED THE 30TH DAY OF OCTOBER, 1963, THE RESPONDENT CHANGED ITS NAME TO THE LAKEWOOD FOREST PRODUCTS (EASTERN) LIMITED. PRIOR TO THE CHANGE OF NAME OF THE RESPONDENT, THE RESPONDENT WAS A PARTY TO AN AGREEMENT WITH HUNTER VENEERS LIMITED SHOP UNION. WHEN THE PRESENT APPLICANT MADE APPLICATION FOR CERTIFICATION AS BARGAINING AGENT FOR EMPLOYEES OF HUNTER VENEERS LIMITED IN 1961, THE BOARD FOUND THAT HUNTER VENEERS LIMITED SHOP UNION WAS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1) (J) OF THE LABOUR RELATIONS ACT. SUBSEQUENTLY, IN 1962, HUNTER VENEERS LIMITED SHOP UNION APPLIED TO BE CERTIFIED AND IN ITS APPLICATION STATED THAT IT WAS A PARTY TO A COLLECTIVE AGREEMENT WITH HUNTER VENEERS LIMITED. THE BOARD IN THAT CASE DISMISSED THE APPLICATION ON THE GROUNDS THAT THE BOARD'S CERTIFICATE COULD NOT ADD TO ANY BARGAINING RIGHTS WHICH IT HAD UNDER THE COLLECTIVE AGREEMENT. NO FINDING WAS MADE WITH RESPECT TO THE STATUS OF HUNTER VENEERS LIMITED SHOP UNION AT THAT TIME.

4. THIS MATTER CAME ON FOR HEARING IN THE FIRST INSTANCE ON JUNE 28TH, 1968, AT WHICH TIME THE APPLICANT CHALLENGED THE STATUS OF LAKEWOOD FOREST PRODUCTS (EASTERN) LTD. SHOP UNION AND CHARGED THAT THE COLLECTIVE AGREEMENT WHICH THE RESPONDENT ALLEGED WAS A BAR TO THIS APPLICATION WAS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT. ALTHOUGH LAKEWOOD FOREST PRODUCTS (EASTERN) LTD. SHOP UNION WAS SERVED WITH NOTICE OF THE APPLICATION, NO ONE APPEARED TO REPRESENT THAT ASSOCIATION AT THE HEARING IN THIS MATTER. SINCE THE APPLICANT MADE ITS CHARGES WITH RESPECT TO THE STATUS OF THE SHOP UNION AND THE AGREEMENT ENTERED INTO BY IT WITH THE RESPONDENT FOR THE FIRST TIME AT THE HEARING ON JUNE 28TH, THE BOARD ADJOURNED THE HEARING IN ORDER TO PERMIT THE REGISTRAR TO SERVE NOTICE OF THE APPLICANT'S CHARGES ON LAKEWOOD FOREST PRODUCTS (EASTERN) LTD. SHOP UNION. NOTICE OF THE CHARGES HAVING BEEN SERVED, THIS MATTER CAME ON FOR CONTINUATION OF

HEARING ON JULY 10TH, 1968. NO ONE APPEARED TO REPRESENT LAKEWOOD FOREST PRODUCTS (EASTERN) LTD. SHOP UNION AT THE HEARING ON JULY 10TH, 1968. THE APPLICANT CALLED AS A WITNESS MRS. MARIE FLEMING WHO TESTIFIED THAT SHE HAD BEEN APPOINTED TREASURER OF LAKEWOOD FOREST PRODUCTS (EASTERN) LTD. SHOP UNION SOME TIME IMMEDIATELY PRIOR TO MAY 1ST, 1965. IN HER CAPACITY AS TREASURER SHE RECEIVED FROM THE COMPANY DUES PAYMENTS WHICH HAD BEEN DEDUCTED FROM THE PAY OF THE MEMBERS OF THE SHOP UNION WHICH SHE DEPOSITED IN THE BANK. IN THE MONTH OF FEBRUARY 1967, ON INSTRUCTIONS FROM THE PRESIDENT OF THE SHOP UNION, ALL THE FUNDS WHICH HAD BEEN DEPOSITED TO THE CREDIT OF THE SHOP UNION WERE WITHDRAWN FROM THE BANK AND DISTRIBUTED AMONG THE MEMBERS. THERE HAS BEEN NO ACTIVITY ON THE PART OF THE SHOP UNION SINCE THAT TIME.

5. THE APPLICANT ARGUED THAT EVEN IF THE SHOP UNION WAS A TRADE UNION WITHIN THE MEANING OF THE ACT PRIOR TO FEBRUARY 1967, IT CEASED TO EXIST AT THAT TIME AND THERE WAS NO ENTITY WITH WHICH THE RESPONDENT COULD RENEW THE COLLECTIVE AGREEMENT WHICH EXPIRED ON ITS FACE ON APRIL 30TH, 1968. THE RESPONDENT HOWEVER, TOOK THE POSITION THAT IT WAS ENTITLED TO RELY UPON THE TERMS OF THE AGREEMENT WHICH AUTOMATICALLY RENEWED ITSELF ON APRIL 30TH, 1968.

6. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THERE WAS NO EVIDENCE WHICH WOULD INDICATE THAT THE SHOP UNION CONTINUED IN EXISTENCE AFTER ITS FUNDS HAD BEEN DISTRIBUTED AMONGST ITS MEMBERS. IN THE ABSENCE OF SUCH EVIDENCE AND IN VIEW OF THE FACT THAT ALTHOUGH SPECIAL NOTICE WAS SERVED ON THE PERSON WHO HAD BEEN THE PRESIDENT OF THE SHOP UNION IMMEDIATELY PRIOR TO ITS APPARENT DISSOLUTION, AND THE FACT THAT NO ONE APPEARED AT THE HEARING TO CHALLENGE THE APPLICANT'S ALLEGATIONS, THE BOARD FINDS THAT WHATEVER STATUS THE APPLICANT HAD PRIOR TO FEBRUARY 1967, IT CEASED TO EXIST AT THAT TIME. THE BOARD THEREFORE FINDS THAT ON APRIL 30TH, 1968, THERE WAS NO VIABLE ENTITY IN EXISTENCE WITH WHICH THE RESPONDENT COULD RENEW THE COLLECTIVE AGREEMENT UPON WHICH IT RELIED. THE BOARD THEREFORE FINDS THAT THE COLLECTIVE AGREEMENT REFERRED TO ABOVE DID NOT AUTOMATICALLY RENEW ITSELF AS ALLEGED BY THE RESPONDENT AND THEREFORE THE AGREEMENT IS NOT A BAR TO THIS APPLICATION.

7. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

8. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT TWEED, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 18TH, 1968, THE TERMINAL DATE FIXED FOR

THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14745-68-R: INTERNATIONAL BROTHERHOOD OF PULP SULPHITE AND PAPER MILL WORKERS AFL-CIO-CLC (APPLICANT) V. C.I.P. CONTAINERS LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER) V. EMPLOYEE (OBJECTOR).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: WILFRED ANDERSON, DONALD HOLDER FOR THE APPLICANT, O. C. HARPER, A. W. TINMOUTH, A. J. CERESINO FOR THE RESPONDENT, AND J. SULLIVAN FOR THE INTERVENER.

DECISION OF THE BOARD: JULY 10, 1968.

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3. THE INTERVENER SUBMITTED THAT THE DECISION IN THIS APPLICATION SHOULD BE POSTPONED UNTIL A REPRESENTATIVE NUMBER OF PERSONS HAVE BEEN EMPLOYED BY THE RESPONDENT. HAVING REGARD, HOWEVER, TO THE REPRESENTATIONS OF THE PARTIES IN THIS MATTER, IT IS QUITE CLEAR THAT ALL OF THE CLASSIFICATIONS ARE PRESENTLY FILLED AND THAT THE RESPONDENT DOES NOT ANTICIPATE A SCHEDULED BUILDUP OF FURTHER EMPLOYEES. IN THE CIRCUMSTANCES IT WOULD SERVE NO USEFUL PURPOSE TO DELAY MAKING A DECISION IN THIS MATTER.

4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF MARKHAM, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON JUNE 26TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14763-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. PINEHILL AUTO LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: M. F. WIGLE FOR THE APPLICANT, W. S. COOK AND D. K. VANLUVEN FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 11, 1968.

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2. THE BOARD FURTHER FINDS THAT ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SALES MANAGERS AND PERSONS ABOVE THE RANK OF SALES MANAGER, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. COUNSEL FOR THE RESPONDENT DREW TO THE BOARD'S ATTENTION THAT THE LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS LOCAL UNION 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA MADE AN APPLICATION FOR CERTIFICATION FOR THE SAME UNIT OF EMPLOYEES LESS THAN TWO MONTHS AGO AND THAT THE BOARD IN THAT CASE HAD DIRECTED THE TAKING OF A REPRESENTATION VOTE. THE ABOVE APPLICANT SUBSEQUENTLY REQUESTED LEAVE OF THE BOARD TO WITHDRAW ITS APPLICATION. THE BOARD, FOLLOWING ITS USUAL PRACTICE WHEN A REQUEST IS MADE TO WITHDRAW AN APPLICATION FOR CERTIFICATION AT THAT STATE IN THE PROCEEDING, BY A DECISION DATED JUNE 5TH, 1968, DISMISSED THE APPLICATION. COUNSEL SUBMITS THAT THE PRESENT APPLICANT IS IN FACT THE SAME APPLICANT AS THE PREVIOUS APPLICANT BUT "WEARING ANOTHER HAT". FOR THIS REASON, COUNSEL ARGUES THAT THE BOARD SHOULD NOT ENTERTAIN THE INSTANT APPLICATION SO SOON AFTER THE DISMISSAL OF THE EARLIER APPLICATION, OR, ALTERNATIVELY, DIRECT THE TAKING OF A REPRESENTATION VOTE AS WAS DONE IN THE HYDRO ELECTRIC COMMISSION OF HAMILTON CASE (1958) C.L.L.C. VOL. 1, 1944-1959, ¶18120.

4. THE BOARD HAS ALWAYS TREATED AN INTERNATIONAL OR NATIONAL TRADE UNION AS A SEPARATE AND DISTINCT ENTITY APART FROM ITS LOCALS AND HAS ALSO TREATED EACH LOCAL OF A TRADE UNION AS A SEPARATE AND DISTINCT ENTITY. ACCORDINGLY, WHEN A LOCAL OF A TRADE UNION MAKES AN APPLICATION FOR CERTIFICATION FOR A UNIT OF EMPLOYEES THAT ANOTHER LOCAL OF THE SAME TRADE UNION HAS JUST PREVIOUSLY UNSUCCESSFULLY SOUGHT CERTIFICATION, THE NEW APPLICANT IS IN NO DIFFERENT POSITION THAT IF THE APPLICATION HAD BEEN MADE BY AN ENTIRELY DIFFERENT TRADE UNION OR ONE OF ITS LOCALS. WE WOULD POINT OUT THAT IN THE HYDRO ELECTRIC COMMISSION OF HAMILTON CASE, WHERE AN INTERNATIONAL UNION APPLIED FOR CERTIFICATION SHORTLY AFTER AN APPLICATION BY ONE OF ITS LOCALS HAD BEEN DISMISSED, THE BOARD ONLY DIRECTED THE TAKING OF A REPRESENTATION VOTE BECAUSE OF PARTICULAR CIRCUMSTANCES RELATING TO THE EVIDENCE OF MEMBERSHIP WHICH DO NOT EXIST IN THE INSTANT CASE.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 2ND, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14781-68-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - C.L.C., ONTARIO HYDRO EMPLOYEES' UNION LOCAL 1000 (INTERVENER).

DECISION OF THE BOARD: JULY 17, 1968.

1. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN.
2. THE INTERVENER HAS OBJECTED TO THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE AND REQUESTS THE BOARD TO LIST THIS MATTER FOR HEARING TO AFFORD THE PARTIES AN OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO THE MATTER.
3. ONE OF THE PURPOSES OF A PRE-HEARING REPRESENTATION VOTE IS TO PERMIT THE BOARD TO ASCERTAIN THE WISHES OF THE EMPLOYEES WITHOUT DELAY. IF THERE ARE UNRESOLVED ISSUES, THESE MAY BE DEALT WITH AFTER THE WISHES OF THE EMPLOYEES HAVE BEEN RECORDED. THE BALLOT BOX MAY THEN BE SEALED SO THAT THE OTHER ISSUES CAN BE RESOLVED ON THEIR OWN MERITS.
4. WHERE, AS IN THIS CASE, THE VOTING CONSTITUENCY IS IDENTIFI-
ABLE WITH REASONABLE ACCURACY AND THERE IS LITTLE LIKELIHOOD THAT A
SECOND REPRESENTATION VOTE WILL BE NECESSITATED, NO ONE IS PREJUDICED
IF THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AND THE
BALLOT BOX BE SEALED. HOWEVER, IF THE BOARD DIRECTED A HEARING IN
ORDER TO RESOLVE THE ISSUES RAISED BY THE OTHER PARTIES, PRIOR TO
RECORDING THE SUPPORT ENJOYED BY THE APPLICANT IN A REPRESENTATION
VOTE, AND THE BOARD SUBSEQUENTLY DETERMINED THAT A REPRESENTATION
VOTE SHOULD BE HELD, THE APPLICANT'S POSITION MIGHT BE ADVERSELY
AFFECTED BY THE DELAY. FOR THESE REASONS, THE BOARD IS OF OPINION
THAT THE PRE-HEARING REPRESENTATION VOTE REQUESTED BY THE APPLICANT
SHOULD BE HELD IN THIS CASE AND THAT THE BALLOT BOX BE SEALED PEND-
ING THE DETERMINATION BY THE BOARD WITH RESPECT TO THE OBJECTIONS
RAISED BY THE INTERVENER.

5. IT APPEARS TO THE BOARD ON AN EXAMINATION OF THE RECORDS OF THE APPLICANT AND THE RECORDS OF THE RESPONDENT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY HEREINAFTER DESCRIBED WERE MEMBERS OF THE APPLICANT AT THE TIME THE APPLICATION WAS MADE.

6. THE BOARD DIRECTS THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL EMPLOYEES OF THE RESPONDENT AT ITS LAKEVIEW GENERATING STATION AT MISSISSAUGA, SAVE AND EXCEPT SHIFT SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SHIFT SUPERVISOR AND FOREMAN, OFFICE STAFF AND TECHNICIANS.

7. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE 5TH DAY OF JULY, 1968 WHO HAVE NOT VOLUNTARILY TERMINATED THEIR EMPLOYMENT OR WHO HAVE NOT BEEN DISCHARGED FOR CAUSE BETWEEN THE 5TH DAY OF JULY, 1968 AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. THE BOARD FURTHER DIRECTS THAT PERSONS CLASSIFIED BY THE RESPONDENT AS LABORATORY CONTROL TECHNICIANS BE PERMITTED TO VOTE AND THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A RULING BY THE BOARD AS TO THEIR ELIGIBILITY TO BE INCLUDED IN THE VOTING CONSTITUENCY.

9. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

10. THE BOARD FURTHER DIRECTS THAT THE BALLOT BOX CONTAINING ALL THE BALLOTS CAST IN THE REPRESENTATION VOTE SHALL BE SEALED AND THAT THE BALLOTS SHALL NOT BE COUNTED PENDING THE FURTHER DIRECTION BY THE BOARD.

11. THE BOARD ALSO DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR HEARING FOLLOWING THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE TO AFFORD THE PARTIES AN OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO THE APPROPRIATENESS OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN THIS MATTER AND ALL OUTSTANDING ISSUES.

12. THE MATTER IS REFERRED TO THE REGISTRAR.

14848-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. BELLER STEEL COMPANY LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: D. M. STOREY FOR THE APPLICANT,
J. P. BORDEN, J. J. BEGALA AND P. F. SVENDSEN FOR THE RESPONDENT.

DECISION OF THE BOARD:

JULY 30, 1968.

. . .

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE RESPONDENT ADVISED THE BOARD THAT FOLLOWING THE MAKING OF THIS APPLICATION THE RESPONDENT LAID OFF 27 EMPLOYEES OUT OF A TOTAL WORK FORCE OF 33 PERSONS. THE RESPONDENT THEREFORE ASKED THE BOARD TO ADJOURN THE APPLICATION OR IN THE ALTERNATIVE TO DETERMINE THE LIST OF ELIGIBLE PERSONS AS OF THE DATE OF THE HEARING IN THIS MATTER AND TO FIX THE HEARING DATE AS THE MEMBER DATE FOR DETERMINING THE APPLICANT'S MEMBERSHIP POSITION.

4. AS POINTED OUT TO THE PARTIES AT THE HEARING, THE BOARD HAS NO DISCRETION WITH RESPECT TO THE TIME AS OF WHICH THE NUMBER OF PERSONS IN THE BARGAINING UNIT MAY BE ASCERTAINED. SECTION 7(1) OF THE ACT PROVIDES THAT "THE BOARD SHALL ASCERTAIN THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE." ACCORDINGLY, "AT THE TIME THE APPLICATION WAS MADE" THERE WERE 33 PERSONS IN THE BARGAINING UNIT. THEREFORE, THE FACT THAT EMPLOYEES WERE LAID OFF SUBSEQUENT TO THE MAKING OF THE APPLICATION CANNOT AFFECT THE NUMBER OF PERSONS IN THE BARGAINING UNIT FOR THE PURPOSE OF THIS APPLICATION.

5. AFTER THE BOARD HAS MADE ITS DETERMINATION OF THE NUMBER OF PERSONS IN THE BARGAINING UNIT THE BOARD MUST THEN DETERMINE THE NUMBER OF EMPLOYEES IN THE UNIT WHO WERE MEMBERS OF THE APPLICANT. THE DETERMINATION OF THE MEMBERSHIP POSITION OF THE APPLICANT IS MADE PURSUANT TO THE PROVISIONS OF SECTION 7(1) OF THE ACT "AT SUCH TIME AS IS DETERMINED UNDER CLAUSE J OF SUBSECTION 2 OF SECTION 77." IN MAKING ITS DETERMINATION OF THE "MEMBER DATE", THE BOARD INVARIABLY ADOPTS THE TERMINAL DATE OF THE APPLICATION FOR THIS PURPOSE. HOWEVER, IN THE INSTANT CASE, EVEN IF THE BOARD WERE TO ACCEDE TO THE RESPONDENT'S REQUEST AND USE THE HEARING DATE AS THE MEMBER DATE, THE APPLICANT'S MEMBERSHIP POSITION AMONG EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE THE APPLICATION WAS MADE WOULD NOT BE ADVERSELY AFFECTED. THERE IS NO EVIDENCE BEFORE THE BOARD THAT ANY OF THE PERSONS CLAIMED BY THE APPLICANT AS MEMBERS CEASED TO BE MEMBERS OF THE APPLICANT AFTER THE DATE THE APPLICATION WAS MADE. SINCE ALL THE PERSONS CLAIMED BY THE APPLICANT AS MEMBERS WERE MEMBERS OF THE APPLICANT PRIOR TO THE DATE THE APPLICATION WAS MADE, ANY SUBSEQUENT DATE COULD NOT ALTER THE FACT OF THEIR MEMBERSHIP.

6. HAVING REGARD TO ALL THE CIRCUMSTANCES OF THIS CASE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD DENIES THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT OF THIS APPLICATION. EVEN IF THE BOARD

HAD JURISDICTION TO DETERMINE THAT SOME DATE OTHER THAN THE TERMINAL DATE WOULD BE THE APPROPRIATE DATE FOR DETERMINING UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT, THE BOARD FINDS ON THE FACTS OF THIS CASE THAT THERE IS NO JUSTIFICATION FOR DEPARTING FROM ITS REGULAR PRACTICE, WHICH IS TO FIND THAT THE TERMINAL DATE IS THE APPROPRIATE DATE FOR DETERMINING THE APPLICANT'S MEMBERSHIP POSITION IN A BARGAINING UNIT COMPRISED OF EMPLOYEES WHO WERE EMPLOYED AS OF THE DATE THE APPLICATION WAS MADE.

7. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS THEREFORE SATISFIED THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 22ND, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14852-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) vs. WEST ELGIN DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: E. B. PARKER FOR THE APPLICANT,
NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 31, 1968.

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF AND PERSONS COVERED BY A CERTIFICATE OF THE BOARD DATED JULY 19TH, 1968, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. AS OF THE DATE OF APPLICATION THE ONLY EMPLOYEES IN THE EMPLOY OF THE RESPONDENT COVERED BY THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 2 ARE BUS DRIVERS, ALL OF WHOM ARE REGULARLY EMPLOYED FOR LESS THAN 24 HOURS PER WEEK. ALL OF THEM, HOWEVER, WERE LAID OFF ON JUNE 30TH, 1968, AND THEIR EXPECTED DATE OF RECALL IS SEPTEMBER 30TH, 1968. THE POLICY OF THE BOARD IS THAT AN EMPLOYEE, TO BE INCLUDED IN A BARGAINING UNIT FOR PURPOSES OF THE COUNT, MUST HAVE BEEN AT WORK BOTH

WITHIN A PERIOD OF A MONTH PRIOR TO THE DATE OF THE MAKING OF THE APPLICATION FOR CERTIFICATION AND WITHIN A PERIOD OF A MONTH AFTER THE DATE OF THE MAKING OF THE APPLICATION. IN THE INSTANT CASE, THE DATE OF APPLICATION WAS JULY 15TH, 1968. SINCE NONE OF THE EMPLOYEES IN THE UNIT ARE EXPECTED TO BE RECALLED UNTIL SEPTEMBER 30TH, 1968, NONE OF THEM ARE INCLUDED IN THE UNIT FOR PURPOSES OF THE COUNT.

4. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

INDEXED ENDORSEMENT - TERMINATION

13813-67-R: THE LITHOGRAPHIC AND LETTERPRESS EMPLOYEES OF SUMNER PRINTING & PUBLISHING CO. LTD., AND (WINDSOR PLATEMAKERS LTD.) (APPLICANT) V. WINDSOR PRINTING PRESSMEN & ASSISTANTS' UNION, LOCAL 274 (RESPONDENT) V. SUMNER PRINTING & PUBLISHING COMPANY LIMITED (INTERVENER).

BEFORE: J. F. W. WEATHERILL, VICE-CHAIRMAN, AND BOARD MEMBERS D. B. ARCHER AND J. E. C. ROBINSON.

DECISION OF THE BOARD: JULY 18, 1968.

1. FOLLOWING THE ISSUANCE OF OUR DECISION IN THIS MATTER DATED DECEMBER 28, 1967, THE RESPONDENT MOVED TO QUASH THE DECISION IN THE SUPREME COURT OF ONTARIO. PRIOR TO THAT HEARING, THE APPLICANTS REQUESTED LEAVE OF THE BOARD TO WITHDRAW THEIR APPLICATION. THE BOARD DID NOT ACT ON THIS REQUEST, PENDING THE DECISION OF THE COURT.

2. THE MOTION TO QUASH WAS DISMISSED BY MR. JUSTICE PARKER ON JUNE 10, 1968. THE TIME FOR APPEALING THIS DECISION HAS NOW PASSED AND NO NOTICE OF APPEAL HAS BEEN SERVED.

3. IN ALL THE CIRCUMSTANCES, WE ARE OF THE OPINION THAT THIS IS A PROPER CASE IN WHICH TO GRANT THE REQUEST OF THE APPLICANTS AND, ACCORDINGLY, THE APPLICATION IS WITHDRAWN BY LEAVE OF THE BOARD.

INDEXED ENDORSEMENT - PROSECUTION

14728-68-U: A.F. GUTSFELD, A. GUTSFELD'S WELDING EXPERT BUILDUP & HARDFACING 13 LONDON STREET NORTH, HAMILTON ONT. (APPLICANT) V. INTERNATIONAL HARVESTER COMPANY - HAMILTON WORKS, AND THE UNITED STEELWORKERS OF AMERICA - UNION OFFICERS FROM THE LOCAL 2868 (MR. WM. SCANDLON AND MR. STEWARD COKE) OF THE NAMED UNION (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD:

JULY 15, 1968.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE A PROSECUTION OF THE RESPONDENTS FOR AN OFFENCE UNDER THE LABOUR RELATIONS ACT.
2. IN PARAGRAPH 3 OF THE APPLICATION IT IS STATED THAT THE ALLEGED OFFENCE COMMENCED: "ON OR ABOUT APRIL 27TH 1959. (EMPLOYMENT DATE) (BEGINNING) UP TO AND INCLUDING SEPTEMBER 29TH 1962..THE FIRST INCIDENT SOMETIMES IN SEPTEMBER 59." IT IS THUS CLEAR THAT MORE THAN SIX MONTHS HAVE ELAPSED SINCE THE OFFENCE IS ALLEGED TO HAVE OCCURRED. FOR THE REASONS GIVEN IN THE BOARD'S DECISION IN JAMES SPEIRS AND FRANK MAULE V. A. M. WOLLFREY ET AL., DATED JUNE 19, 1968, BOARD FILE NO. 14703-68-U, THE APPLICATION IS DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

14286-67-U: INTERNATIONAL WOODWORKERS OF AMERICA (COMPLAINANT) V. CANUSA COATING SYSTEMS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: M. J. SOMERVILLE AND J. C. HORAN
FOR THE COMPLAINANT, DONALD J. MCKILLOP AND E. LAWSON FOR THE
RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
O. HODGES: JULY 4, 1968.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT HAS COMPLAINED THAT GERALD MARKEL, ROMEO MEUNIER, JAMES BROADBENT, GERALD ORR AND LAURENCE RAWN HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 52 OF THE LABOUR RELATIONS ACT IN THAT THEY WERE DISCHARGED BY THE RESPONDENT BECAUSE OF THEIR ACTIVITY IN AND SUPPORT FOR THE COMPLAINANT UNION AND THE COMPLAINANT REQUESTS THEIR REINSTATEMENT WITH COMPENSATION.
2. THE EVIDENCE ESTABLISHED THAT THE RESPONDENT IS ENGAGED IN THE MANUFACTURE OF PLASTIC PRODUCTS IN A PLANT AT HUNTSVILLE. A RELATED COMPANY KNOWN AS HUNTSVILLE TIMBER PRODUCTS LIMITED ALSO OPERATES OUT OF THE SAME PLANT WHERE THE RESPONDENT IS LOCATED. THE RESPONDENT'S SIDE OF THE PLANT IS KNOWN AS THE PLASTICS SIDE AND THE HUNTSVILLE TIMBER PRODUCTS PORTION OF THE PLANT IS KNOWN AS THE WOODS SIDE. BOTH THE WOODS SIDE AND THE PLASTICS SIDE HAVE THE SAME PLANT MANAGER, E. A. LAWSON. THE TWO COMPANIES ALSO SHARE THE SAME OFFICE STAFF AND THE SAME SHIPPING AND RECEIVING FACILITIES.

3. THE COMPLAINANT ADDUCED EVIDENCE WHICH ESTABLISHED THAT E. A. LAWSON CALLED A MEETING OF THE RESPONDENT'S EMPLOYEES ON FEBRUARY 22ND, 1968 WHICH LASTED APPROXIMATELY ONE HOUR. THE RESPONDENT FILED WITH THE BOARD A SUMMARY OF MR. LAWSON'S SPEECH AND THIS SUMMARY READS AS FOLLOWS:

"OPENING REMARKS

THERE HAVE BEEN SEVERAL WILD RUMOURS AND SPECULATIONS LATELY, ONE OF WHICH, IS THAT I WAS GOING TO HOLD A MEETING WITH YOU FELLOWS. IN ORDER TO TRY AND STRAIGHTEN OUT SOME OF THE FACTS, THE MEETING RUMOUR IS NOW TRUE.

1. WAGES - THERE HAVE BEEN SEVERAL COMMENTS ON THIS. PLANT HAS NOT BEEN IN OPERATION FOR A YEAR YET. MOST OF YOU HAVE BEEN RECEIVING TRAINING INCREMENTS DURING THIS PERIOD, AND LETS FACE IT SOME OF YOU ARE RECEIVING THE RATE OF A SPECIFIC JOB, WHEN NOT COMPLETELY TRAINED OR QUALIFIED. THIS IS ONE OF THE SNAGS IN A TRAINING PROGRAM, IS THAT PEOPLE TEND TO LOOK FOR A REGULAR INCREASE FOR EVERMORE, AND THIS JUST ISN'T PRACTICAL.

YOU WERE ALL TOLD, THAT COMPANY POLICY IS TO PAY ABOVE AVERAGE WAGES FOR THE COMMUNITY FOR SIMILAR TYPE OF WORK. THIS POLICY HAS NOT CHANGED. COMPANY HAS SPENT APPROXIMATELY 1-1/2 MILLION IN THIS LOCATION, AND IT CERTAINLY DOESN'T REQUIRE ANY IMAGINATION TO REALIZE THAT LAST YEAR WE CERTAINLY DIDN'T GET ANYTHING BACK OUT OF IT. THE THING FOR YOU FELLOWS TO REALIZE, IS THAT YOUR WAGES WERE NOT INFLUENCED BY THIS. WE HAVE KEPT OUR WORD AS FAR AS SECURITY OF EMPLOYMENT. THERE HAS BEEN NO LAY-OFFS DURING SLACK PERIODS. WE HAVE LET SOME GO, WHO WERE NOT SUITABLE, BUT NOT WITHOUT A FAIR TRIAL.

YOU HAVE ALL NOTICED HOW SLACK WORK HAS BEEN IN THE PLANT ON VARIOUS OCCASIONS, YET WE CAN ALWAYS MANAGE TO FIND SOMETHING TO DO. YOU WERE ALL TOLD THAT A PERSON HAD TO BE WILLING TO DO ANYTHING AND THIS STILL GOES, AND WILL ALWAYS BE THE CASE.. I UNDERSTAND THAT SOME INDIVIDUALS FEEL THAT ONCE THEIR OWN PARTICULAR JOB IS COMPLETED, THEY SHOULD BE ABLE TO JUST TAKE IT EASY UNTIL THE END OF THE DAY, OR UNTIL MORE OF THE SAME WORK IS AVAILABLE. WE CAN NOT AFFORD TO OPERATE THIS WAY. THE ENTIRE OPERATION DEPENDS ON WILLING TEAMWORK. THIS MEANS CO-OPERATION AMONG YOURSELVES AND WITH THOSE RESPONSIBLE FOR SEEING THE WORK IS DONE.

ACCORDING TO THE INFORMATION GIVEN TO US WHEN WE LOCATED HERE, ONLY 1/3 OF THOSE WE HIRED WOULD BE ANY GOOD, AS YOU ALL KNOW, WE HAVE HAD FAR BETTER SUCCESS THAN THIS, WHICH HAS PLEASED US GREATLY.

EXPENSIVE TO TRAIN PEOPLE - BILL FISHER, DON CALLACOTT, LEAVING HURTS, BUT THIS IS PART OF THE GAME. THIS HOWEVER SHOULD NOT LEAD ANYONE TO BELIEVE THAT OUR BACKS ARE TO THE WALL AS FAR AS KEEPING THE OPERATION GOING. NO ONE INCLUDING MYSELF IS INDISPENSABLE TO THE PLANT. THE FACT THERE ARE NEW PLANTS LOCATING IN HUNTSVILLE MAY LEAD SOME PEOPLE TO BELIEVE THAT THEY CAN BECOME COMPLACENT AND SUIT THEMSELVES AS TO WHERE AND HOW MUCH WORK THEY ARE GOING TO DO, ALSO BECAUSE THE NUMBER OF AVAILABLE PEOPLE FOR HIRING WILL DECREASE, SOME INDIVIDUALS HAVE THE IMPRESSION THAT THIS AND OTHER PLANTS WILL HAVE TO PUT UP WITH ANYTHING FROM ANYBODY.

I CAN ASSURE ANYONE THINKING ALONG THESE LINES, THAT THIS IS DEFINITELY NOT THE CASE. NO COMPANY CAN EVER AFFORD TO BE PLACED IN THIS POSITION AND STAY IN BUSINESS AND REMAIN COMPETATIVE.

WHERE NEW PLANTS WILL HELP YOU FELLOWS AND THE COMMUNITY, IS IN RAISING THE STANDARD OF LIVING. THE MORE PLANTS THAT ARE PAYING A FAIR WAGE, THE HIGHER THE AVERAGE EARNINGS BECOME IN THE AREA. ANYONE WHO TELLS YOU THAT A COMPANY LOCATES HERE TO GET CHEAP LABOUR IS TALKING GARBAGE. THE REASON WE AND OTHERS LOCATED HERE ARE LOCATION, DESIGNATED AREA, AND AVAILABILITY OF PEOPLE. BY AVAILABILITY OF PEOPLE THIS MEANS PEOPLE IN HUNTSVILLE AREA, AND BECAUSE HUNTSVILLE IS AN ATTRACTIVE TOWN, IT IS EASY TO DRAW PEOPLE FROM OTHER AREAS TO COME AND LIVE HERE. THIS IS SOMETHING THAT HAS TO BE SERIOUSLY LOOKED AT BY ANY COMPANY, BEFORE LOCATING TO MAKE SURE WHATEVER HAPPENS, THAT THERE WILL ALWAYS BE PEOPLE AVAILABLE.

ANOTHER RUMOUR WHICH SEEMS TO BE CIRCULATING, IS THAT OUR HANDS ARE TIED IN SOME RESPECTS AS TO HOW WE RUN THE OPERATION BECAUSE THE GOVERNMENT OWNS OR PARTLY OWNS OUR MACHINERY. I DON'T KNOW WHAT IDIOT STARTED THIS ONE, BUT THERE IS ABSOLUTELY NO FOUNDATION TO THIS AT ALL. EVERY SINGLE PIECE OF EQUIPMENT, STORES ETC IN HERE BELONGS TO THE COMPANY WITH NO STRINGS ATTACHED.

EXPLANATION OF GOVERNMENT ASISTANCE FOR DESIGNATED AREAS -

THE LAST RUMOUR WHICH HAS BEEN CIRCULATING, IS THE FACT THAT SOME PEOPLE MIGHT BE INTERESTED IN UNION, OR HAVE BEEN APPROACHED BY THE UNION.

NOW THERE IS NO DOUBT, THAT IN SOME CASES IN THE PAST, UNIONS HAVE HELPED BOTH EMPLOYEES AND MANAGEMENT. HOWEVER, ONE ONLY HAS TO LOOK AT SOME OF THE HAPPENINGS IN THE PAST FEW YEARS TO REALIZE THAT IN MANY CASES IT IS COMPLETELY OUT OF HAND.

OPERATING A PLANT CAN BE COMPARED TO A MARRIAGE. BETWEEN EMPLOYEES AND MANAGEMENT, SURE THERE CAN BE ARGUMENTS, COMPLAINTS AND DISRUPTIONS JUST AS IN A MARRIAGE, BUT THE PROBLEM IS MADE GREATER WHEN THE MOTHER-IN-LAW IS BROUGHT INTO IT, ESPECIALLY IF YOU ARE HAVING TO HELP SUPPORT HER AT THE SAME TIME.

UNIONS ARE A BUSINESS, AND LIKE ANY OTHER BUSINESS ARE OUT TO MAKE MONEY, MOST OF WHICH GOES TO THE STATES ANYWAY. MONTHLY DUES AMOUNT TO ALMOST ONE WEEKS WORK IN THE YEAR. AND WHEN ALL IS SAID AND DONE, WHAT DO THEY REALLY DO FOR YOU, IF WORKING CONDITIONS ARE ALREADY ABOVE AVERAGE.

I HAVE TOLD YOU FELLOWS THAT WE HAVE AN OPEN DOOR POLICY. IF ANYONE OF YOU, HAS A PROBLEM, COME AND DISCUSS IT AND GIVE US A CHANCE TO DO SOMETHING ABOUT IT. MOST OF YOU KNOW US WELL ENOUGH TO KNOW THAT WE DON'T HOLD GRUDGES OR TRY TO VICTIMIZE ANYONE. SURE ANYONE OF YOU IS LIABLE TO CATCH SUPREME HELL FOR SOMETHING BUT THEN IT IS OVER. EVERYONE CAN MAKE MISTAKES INCLUDING US. BUT NOBODY GETS A MISTAKE HELD AGAINST THEM, UNLESS THEY KEEP REPEATING.

THERE HAVE ONLY BEEN TWO OR THREE CASES IN THE PAST YEAR, WHERE ANYONE HAS COME UP WITH A PROBLEM OR COMPLAINT. I THINK THESE WERE ANSWERED SATISFACTORILY FOR BOTH SIDES. ALL I AM TRYING TO SAY IS, IF ANYONE HAS SOMETHING TO BEEF ABOUT, BRING IT OUT. NOTHING WILL BE SOLVED, IF IT IS NOT OUT IN THE OPEN."

EACH OF THE AGGRIEVED PERSONS JOINED THE COMPLAINANT UNION ON OR ABOUT FEBRUARY 29TH, 1968 OR MARCH 1ST, 1968.

4. ON MARCH 5TH, 1968, MR. LAWSON CAUSED THE FOLLOWING NOTICE TO BE POSTED:

"TO ALL EMPLOYEES

MARCH 5, 1968

E. A. LAWSON

WITH OUR FIRST YEAR OF OPERATION COMPLETE, WE ARE IN A BETTER POSITION TO EVALUATE THE REQUIREMENTS OF THE PLANT, JOB RESPONSIBILITIES AND NUMBER OF PEOPLE REQUIRED TO PRODUCE THE EXPECTED SALES FORECASTS.

UNFORTUNATELY, BECAUSE OF SOME OF THE UNFORESEEN PROBLEMS SUCH AS THE MANDREL AND ADHESIVE PROBLEMS OF WHICH MOST OF YOU ARE AWARE OF, THIS GREATLY AFFECTED OUR FORECAST FOR PENETRATING THE MARKET, WITH THE RESULT THAT WE ARE APPROXIMATELY ONE YEAR BEHIND OUR ORIGINAL PROGRAMME. BECAUSE OF THIS, WE HAVE FINALLY HAD TO FACE THE UNPLEASANT TASK OF REDUCING THE PRODUCTION FORCE BY A FEW PEOPLE.

SENIORITY, COMPETANCE, SKILL AND JOB REQUIREMENTS HAVE ALL BEEN CONSIDERED BEFORE SELECTING THOSE WHO ARE TO BE LAYED OFF INDEFINITELY.

IN KEEPING WITH OUR WAGE POLICY, AND THE CONTINUED RISE IN COST OF LIVING, WE ARE PUTTING INTO EFFECT A GENERAL WAGE INCREASE. AT THE SAME TIME, WE HAVE PERFORMED A JOB EVALUATION STUDY TO UPGRADE SOME CATEGORIES, AND COME UP WITH FOUR CLASSES OF OPERATOR GROUP.

PLEASE FEEL FREE TO DISCUSS WITH US ANY QUESTIONS WHICH MAY ARISE FROM THESE CHANGES.

EAL/rc

E. A. LAWSON. "

5. ALSO ON MARCH 5TH, 1968, MESSRS. ORR, BROADBENT AND ROMEO MEUNIER WERE EACH SERVED WITH A NOTICE IN THE FOLLOWING TERMS:

"MARCH 5TH, 1968.

G. ORR,

WE ARE SORRY TO INFORM YOU, THAT OWING TO THE NECESSARY REDUCTION IN STAFF, YOU WILL BE LAYED OFF INDEFINITELY AS OF FRIDAY, MARCH 8, 1968.

CANUSA COATING SYSTEMS LTD.

EAL/rc

E. A. LAWSON. "

6. ON MARCH 8TH, 1968, MR. MARKEL WAS ALSO SERVED WITH A SIMILAR LAYOFF NOTICE.

7. MR. RAWN WAS DISCHARGED ON MARCH 5TH, 1968 AND HIS DISCHARGE WILL BE DEALT WITH SEPARATELY.

8. EACH OF THE GRIEVORS HAD CONSIDERABLY MORE SENIORITY THAN MANY OF THE EMPLOYEES WHO WERE RETAINED BY THE RESPONDENT FOLLOWING THE INDEFINITE LAYOFFS ON MARCH 5TH AND MARCH 8TH. THE SENIORITY LIST AS OF MARCH 5TH, 1968 WAS FILED BY THE RESPONDENT AT THE HEARING IN THIS MATTER. THE SENIORITY LIST SHOWS THE DATE EMPLOYEES COMMENCED THEIR EMPLOYMENT, THE JOB CLASSIFICATION AS OF MARCH 5TH, 1968, AND THE RESPONDENT'S ASSESSMENT OF THE TIME REQUIRED TO TRAIN AN EMPLOYEE TO PERFORM THE JOB. THE AGGRIEVED PERSONS' POSITION ON THE SENIORITY LIST HAVE BEEN MARKED WITH AN ASTERISK FOR EASY REFERENCE. THE SENIORITY LIST READS AS FOLLOWS:

"CANUSA COATING SYSTEMS LIMITED
EMPLOYEES BY SENIORITY

D. DEZAINDE JANUARY 2, 1967
J. SIMIONI MARCH 6, 1967
C. RUFF " 14, 1967

JANITOR
WORK LEADER - VULCANIZER AND EXPANSION
MECHANIC - TRAINING REQUIRED 5 YRS

R. MOORES	"	20, 1967	WIRE & P TUBING EXTRUSION OPR TRAINING REQ'D 2 YRS
ROBERT MEUNIER	"	20, 1967	EJECTION OPR - TRAINING REQ'D 3 MONTHS
J. RHINESS	"	27, 1967	WORK LEADER - SLEEVE EXTRUSION OPR T.R. 2 YRS
C. WINTERBOTTOM	"	27, 1967	QUALITY CONTROL & PACKAGING - 6 MONTHS
L. SCHAMEHORN		APRIL 17, 1967	SLEEVE EXTRUSION HELPER - INGOING TRACK - 1 MONTH
*G. MARKLE	"	24, 1967	EJECTION HELPER - 1 MONTH
*ROMEO MEUNIER		MAY 2, 1967	VULCANIZER OPR - 2 MONTHS
W. MORTON	"	16, 1967	ADHESIVE OPR - 6 MONTHS
D. LANE	"	23, 1967	SHIPPER - 6 MONTHS
P. TANNER	"	23, 1967	SLEEVE EXTRUSION HELPER - 3 MONTHS
*J. BROADBENT		JUNE 6, 1967	EXPANSION OPR - 3 MONTHS
*G. ORR		JULY 17, 1967	" " 3 "
*L. RAWN	"	27, 1967	ADHESIVE HELPER - 2 WEEKS
I. PAYNE		AUG. 21, 1967	QUALITY CONTROL & PACKAGING HELPER - 1 MONTH
B. PARIS	"	23, 1967	WIRE & P TUBING EXTRUSION OPR - 2 YRS
R. TIPPER	"	28, 1967	SLEEVE EXTRUSION HELPER - OUTGOING TRACK - 2 MONTHS
S. BENNETT		NOV. 14, 1967	EXPANSION OPR - 3 MONTHS
C. MORRIS	"	20, 1967	SLEEVE EXTRUSION HELPER - 1 MONTH
W. HICKS		DEC. 18, 1967	VULCANIZER OPR - 2 MONTHS
R. HOYLE		JAN. 2, 1968	WIRE & P TUBING EXTRUSION OPR - 2 YRS "

9. THE RESPONDENT AGREED THAT MARKET, ROMEO MEUNIER, BROADBENT AND ORR WERE GOOD WORKERS IN THEIR JOBS AND THERE WAS NO REAL COMPLAINT ABOUT THEIR PERFORMANCE. THE RESPONDENT AGREED THAT MARKEL COULD HAVE PERFORMED THE JOB HELD BY C. MORRIS, WHO IS THE THIRD FROM LAST PERSON ON THE SENIORITY LIST. IN THE CASES OF ROMEO MEUNIER, BROADBENT AND ORR, THERE WERE JUNIOR EMPLOYEES RETAINED BY THE RESPONDENT IN THE CLASSIFICATIONS HELD BY EACH OF THEM.

10. MR. LAWSON STATED THAT THE RESPONDENT WOULD BE PREPARED TO TAKE THESE FOUR PERSONS BACK IF BUSINESS IMPROVED. IT IS TO BE NOTED, HOWEVER, THAT WHEN IT WAS NECESSARY TO HIRE TEMPORARY EMPLOYEES ON THE WOODS SIDE, MR. LAWSON HIRED FIVE PERSONS WHO HAD NEVER WORKED FOR EITHER COMPANY PREVIOUSLY AND HE DID NOT ATTEMPT TO PROVIDE WORK FOR THE LAID OFF EMPLOYEES. IMMEDIATELY FOLLOWING THE LAYOFFS OF THE PERSONS IN QUESTION, THE REMAINING EMPLOYEES RECEIVED AN INCREASE IN WAGES FROM THE RESPONDENT IN ACCORDANCE WITH THE TERMS OF THE NOTICE POSTED ON MARCH 5TH, 1968.

11. MR. LAWSON TESTIFIED ON BEHALF OF THE RESPONDENT THAT THE JUNIOR EMPLOYEES WERE RETAINED IN PREFERENCE TO THE LAID OFF EMPLOYEES ON THE BASIS OF THEIR SUPERIOR TRAINING AND PERFORMANCE.

12. THE EVENTS LEADING TO MR. RAWN'S DISCHARGE AS RELATED BY THE RESPONDENT'S WITNESS MRS. COADY, WHO WAS EMPLOYED AS MR. LAWSON'S SECRETARY, ARE AS FOLLOWS. ON TUESDAY, MARCH 5TH, MR. LAWSON ASKED MRS. COADY TO 'PHONE THE DOCTOR'S OFFICE TO ASCERTAIN WHETHER OR NOT RAWN DID, IN FACT, HAVE AN APPOINTMENT WITH THE DOCTOR THE PREVIOUS DAY AS HE HAD ALLEGED IN ORDER TO OBTAIN PERMISSION TO LEAVE WORK EARLY. HAVING BEEN INFORMED BY THE DOCTOR'S NURSE THAT RAWN DID NOT HAVE AN APPOINTMENT ON MONDAY, MARCH 4TH, MRS. COADY ADVISED MR. LAWSON OF THIS INFORMATION. MR. LAWSON DISCHARGED RAWN FOR NOT TELLING THE TRUTH CONCERNING HIS APPOINTMENT.

13. APPARENTLY, MR. RAWN DID HAVE AN APPOINTMENT AT 2:15 P.M. ON MARCH 4TH AND OBTAINED PERMISSION TO LEAVE WORK EARLY TO KEEP THE APPOINTMENT. HE WENT HOME TO WASH UP AND CHANGE HIS CLOTHES PRIOR TO HIS APPOINTMENT, HOWEVER, BY THE TIME HE WAS READY HE WAS TOO LATE FOR THE APPOINTMENT. AFTER RAWN WAS DISCHARGED, AT THE SUGGESTION OF THE UNION ORGANIZER, HE REATTENDED THE DOCTOR'S OFFICE ON MARCH 6TH AND ASKED FOR A LETTER WHICH WOULD CONFIRM THE FACT THAT HE DID HAVE AN APPOINTMENT ON MARCH 4TH. THE NURSE TELEPHONED MRS. COADY AND ADVISED HER THAT RAWN DID, IN FACT, HAVE AN APPOINTMENT ON MARCH 4TH BUT THAT HE HAD NOT KEPT THE APPOINTMENT AND THIS HAD CREATED THE CONFUSION WHICH LED TO MRS. COADY BEING ADVISED THAT THERE WAS NO APPOINTMENT FOR RAWN ON MARCH 4TH. RAWN THEN WENT TO SEE MR. LAWSON ON MARCH 6TH CONCERNING HIS DISCHARGE AND SINCE THE QUESTION OF THE APPOINTMENT HAD BEEN CLARIFIED, LAWSON ADVISED RAWN THAT HE WAS SORRY FOR THE MIX UP AND WITHDREW THE DISCHARGE. HOWEVER, LAWSON FURTHER ADVISED RAWN THAT HE HAD PLANNED TO LAY OFF RAWN IN ANY EVENT AND LAWSON THEN REQUESTED MRS. COADY TO PREPARE A LAYOFF NOTICE IN THE SAME FORM AS THAT GIVEN TO THE OTHER FOUR AGGRIEVED PERSONS.

14. AFTER THE LAYOFF NOTICE WAS GIVEN TO RAWN, THE DOCTOR'S OFFICE AGAIN CALLED MRS. COADY AND THE DOCTOR'S NURSE ADVISED MRS. COADY THAT RAWN HAD TOLD HER THAT HE WANTED A LETTER CONCERNING HIS SCHEDULED APPOINTMENT ON MARCH 4TH "FOR THE UNION". MRS. COADY STATED THAT SHE HAD EXPRESSED SURPRISE CONCERNING THE UNION BECAUSE THERE WAS NO UNION IN THE PLANT. MRS. COADY ASKED THE NURSE IF SHE WAS SURE RAWN HAD MENTIONED THE UNION AND WHEN THE NURSE CONFIRMED HER STATEMENT, MRS. COADY TOOK THIS INFORMATION TO MR. LAWSON. SINCE RAWN HAD NOT AS YET LEFT THE PLANT, LAWSON WENT TO HIM AND CAUSED HIM TO RETURN THE LAYOFF NOTICE WHICH HAD BEEN GIVEN TO RAWN AND LAWSON THEN REINSTITUTED THE DISCHARGE.

15. THE EVIDENCE ALSO ESTABLISHED THAT ON PREVIOUS OCCASIONS THERE WERE SOME TEMPORARY TRANSFERS FROM THE PLASTICS SIDE TO THE WOODS SIDE OF THE PLANT. THERE WAS ALSO EVIDENCE THAT MR. LAWSON HAD MADE CERTAIN INQUIRIES OF EMPLOYEES CONCERNING THEIR ACTIVITY AND MR. MARKEL OPENLY HELPED THE UNION ORGANIZER IN HIS ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES. THE EVIDENCE FURTHER ESTABLISHED THAT MR. LAWSON WAS HOSTILE TO THE UNION AND THIS FACT WAS READILY ADMITTED BY THE RESPONDENT.

16. THE RESPONDENT PRODUCED PRODUCTION FIGURES TO ESTABLISH A FALL OFF IN BUSINESS AND AN INCREASE IN INVENTORY. A COMPARISON OF THE PRODUCTION FIGURES DURING THE MONTHS OF JANUARY AND FEBRUARY BEFORE THE EVENTS IN QUESTION AND THE TWO MONTHS SUBSEQUENT TO MARCH 5TH DISCLOSES THAT THE PRODUCTION ON THE RECAP WIRE AND TUBING LINES HAD INCREASED BY OVER 1,000,000 FT. OF PRODUCT. SUBSEQUENT TO MARCH 5TH, HOWEVER, THE PRODUCTION ON THE SLEEVE LINE WAS DOWN BY APPROXIMATELY 18,253 FINISHED SLEEVES. THE RESPONDENT ALSO HAD A VERY HIGH INVENTORY WHICH HAD INCREASED IN THE PREVIOUS MONTHS. THE RESPONDENT ARGUED THAT THE LAYOFFS WERE NECESSITATED BY ITS EXCESSIVE INVENTORY OF PRODUCTS AND THAT THE UNION ACTIVITY OF THE EMPLOYEES CONCERNED HAD NO BEARING ON THEIR LAYOFF. WHILE MR. LAWSON FRANKLY ADMITTED THAT HE HAD NO USE FOR UNIONS, HE STATED THAT THIS FACT DID NOT INFLUENCE HIS DECISION WITH RESPECT TO THE LAYOFFS.

17. WHILE IT MAY BE THAT A LAYOFF WAS NECESSITATED IN THE CIRCUMSTANCES OF THIS CASE, HOWEVER, WHEN ALL THE EVIDENCE IS CONSIDERED WE ARE IMPELLED TO FIND THAT THE CHOICE OF THE PERSONS TO BE LAID OFF BY THE RESPONDENT WAS AFFECTED BY THE UNION ACTIVITY OF THE AGGRIEVED PERSONS. THE RESPONDENT TOOK THE POSITION, WHICH IS SUMMARIZED IN THE NOTICE TO EMPLOYEES OF MARCH 5TH, THAT BECAUSE OF PRODUCTION DIFFICULTIES THE RESPONDENT HAD NOT BEEN ABLE TO PENETRATE THE MARKET AS IT HAD HOPED AND IT WAS THIS FACTOR WHICH PRECIPITATED THE DISCHARGES. IT APPEARS TO US, HOWEVER, THAT THERE IS A DEGREE OF INCONSISTENCY IN THE RESPONDENT'S ACTIONS. A NEW COMPANY SUCH AS THE RESPONDENT, FINDING ITSELF IN A POSITION WHERE IT IS REQUIRED TO LAYOFF APPROXIMATELY ONE-QUARTER OF ITS PRODUCTION FORCE IN THE CIRCUMSTANCES ALLEGED, WOULD NOT LIKELY BE ABLE TO INCREASE THE WAGES OF THE REMAINING EMPLOYEES WHEN IT WAS UNABLE TO MARKET ITS GOODS. IF, HOWEVER, WE LOOK AT THE RESPONDENT'S ACTIVITIES WITH RESPECT TO THE AGGRIEVED PERSONS AS A DISCHARGE FOR UNION ACTIVITY, THE WAGE INCREASE FOR THE REMAINING EMPLOYEES IS EXPLAINABLE IF IT IS CONSIDERED TO BE AN INDUCEMENT TO THOSE EMPLOYEES TO STEER CLEAR OF ANY INVOLVEMENT WITH THE UNION.

18. AGAIN, WHEN A COMPANY LAYS OFF EMPLOYEES WITH HIGH SENIORITY IN PREFERENCE TO EMPLOYEES WITH SENIORITY OF TWO OR THREE MONTHS, THE COMPANY'S EXPLANATION AS TO WHY THE JUNIOR EMPLOYEES WERE KEPT DO NOT RING TRUE WHEN THE RESPONDENT ADMITS THAT THE EMPLOYEES WHO WERE PLACED ON INDEFINITE LAYOFF WERE GOOD EMPLOYEES WHO HAD PERFORMED THEIR JOBS WELL. AGAIN, THE SINCERITY OF THE COMPANY CAN BE ASSESSED WHEN WE CONSIDER MR. LAWSON'S ACTION IN HIRING THE FIVE TEMPORARY EMPLOYEES FOR THE WOODS SIDE OF THE BUSINESS. IT WOULD BE NORMAL IN SUCH CIRCUMSTANCES AND CERTAINLY WOULD BE A VERY EASY THING FOR MR. LAWSON TO HAVE OFFERED THE AVAILABLE WORK TO THE LAID OFF EMPLOYEES IF THEIR LAYOFF HAD BEEN IN GOOD FAITH. HOWEVER, MR. LAWSON DID NOT DO THIS BUT SAW FIT TO HIRE FIVE PERSONS WITH WHOM HE HAD NO PREVIOUS EXPERIENCE. AGAIN, THIS ACTION ON THE PART OF MR. LAWSON IS EXPLAINABLE IF WE ACCEPT THE FACT THAT THESE PERSONS WERE LAID OFF BECAUSE OF THEIR UNION ACTIVITY.

19. DEALING NOW WITH THE CASE OF MR. RAWN, IT IS READILY APPARENT FROM THE EXPLANATION GIVEN BY MRS. COADY, CALLED ON BEHALF OF THE RESPONDENT, THAT MR. LAWSON CHANGED HIS MIND ABOUT LAYING OFF MR. RAWN WHEN HE DISCOVERED MR. RAWN'S CONNECTION WITH THE UNION. NO OTHER EXPLANATION MAKES SENSE IN VIEW OF MR. LAWSON'S WITHDRAWAL OF RAWN'S LAYOFF NOTICE AND THE IMPOSITION OF A DISCHARGE IMMEDIATELY UPON DISCOVERING HIS CONNECTION WITH THE UNION.

20. ALL THE ABOVE FACTORS, WHEN CONSIDERED IN THE LIGHT OF MR. LAWSON'S OPEN HOSTILITY TO THE UNION, LEAD US TO THE INESCAPABLE CONCLUSION THAT THE CHOICE OF THE PERSONS TO BE LAID OFF WAS MOTIVATED BY THE UNION ACTIVITY OF THE AGGRIEVED PERSONS.

21. IT IS ALSO TO BE NOTED THAT WHILE THE RESPONDENT TOOK THE POSITION THAT THE LAYOFFS WERE NECESSITATED FOR ECONOMIC REASONS ON MARCH 5TH, THERE WAS NO SUGGESTION DURING MR. LAWSON'S SPEECH TWELVE DAYS EARLIER WHEN HE ADDRESSED THE EMPLOYEES ON FEBRUARY 22ND THAT A LAYOFF WOULD BE NECESSITATED. IF ANYTHING, THE CONTRARY WOULD BE INDICATED FROM WHAT WAS SAID BY MR. LAWSON. A SUMMARY OF MR. LAWSON'S SPEECH READS, IN PART, AS FOLLOWS: "YOU HAVE ALL NOTICED HOW SLACK WORK HAS BEEN IN THE PLANT ON VARIOUS OCCASIONS, YET WE CAN ALWAYS MANAGE TO FIND SOMETHING TO DO. YOU WERE ALL TOLD THAT A PERSON HAD TO BE WILLING TO DO ANYTHING AND THIS STILL GOES, AND WILL ALWAYS BE THE CASE..." IT IS READILY APPARENT FROM THAT STATEMENT AND FROM OTHER STATEMENTS IN THE SUMMARY OF MR. LAWSON'S SPEECH THAT TWELVE DAYS PRIOR TO THE LAYOFF NO ACTION WAS CONTEMPLATED WITH RESPECT TO LAYOFF. IN ADDITION, THERE IS NO SUGGESTION FROM THE PRODUCTION FIGURES FILED THAT ANYTHING TRANSPIRED BETWEEN FEBRUARY 22ND AND MARCH 5TH WHICH WOULD CAUSE THE COMPANY TO REASSESS THE POSITION IT TOOK ON FEBRUARY 22ND.

22. HAVING REGARD TO ALL THESE FACTORS, THE BOARD FINDS THAT THE RESPONDENT REFUSED TO CONTINUE TO EMPLOY EACH OF THE AGGRIEVED PERSONS BECAUSE THEY WERE MEMBERS OF THE COMPLAINANT UNION AND WERE EXERCISING THEIR RIGHTS UNDER THE ACT. THE RESPONDENT WAS MOTIVATED IN ITS ACTIONS BY ITS ATTEMPT TO CAUSE ITS EMPLOYEES TO REFRAIN FROM BECOMING OR CONTINUING TO BE MEMBERS OF THE COMPLAINANT UNION CONTRARY TO SECTION 52 OF THE ACT.

23. THE BOARD DETERMINES THAT GERALD MARKEL, ROMEO MEUNIER, JAMES BROADBENT, GERALD ORR AND LAURENCE RAWN SHALL BE REINSTATED FORTHWITH IN THE POSITION HELD BY THEM AT THE TIME OF THEIR DISCHARGE. HAVING REGARD TO ALL THE EVIDENCE WITH RESPECT TO THE AMOUNT OF LOSS OF EARNINGS SUSTAINED BY THE AGGRIEVED PERSONS AND THEIR ATTEMPTS TO MITIGATE THEIR LOSS OF EARNINGS, THE BOARD FURTHER DETERMINES THAT THE RESPONDENT PAY TO

GERALD MARKEL	THE SUM OF \$650.00
ROMEO MEUNIER	THE SUM OF \$650.00
JAMES BROADBENT	THE SUM OF \$650.00
GERALD ORR	THE SUM OF \$650.00
LAURENCE RAWN	THE SUM OF \$650.00

FORTHWITH AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY THEM BETWEEN THE DATE OF THEIR DISCHARGE AND MAY 14TH, 1968, THE DATE OF THE FIRST HEARING IN THIS MATTER.

24. THE BOARD DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS THAT GERALD MARKEL, ROMEO MEUNIER, JAMES BROADBENT, GERALD ORR AND LAURENCE RAWN SUSTAINED BY REASON OF THEIR HAVING BEEN DISCHARGED CONTRARY TO THE ACT BETWEEN MAY 14TH, 1968 AND THE DATE OF THEIR REINSTATEMENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT ABOVE REFERRED TO WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO THE ADDITIONAL AMOUNT TO BE PAID TO GERALD MARKEL, ROMEO MEUNIER, JAMES BROADBENT, GERALD ORR AND LAURENCE RAWN.

DECISION OF BOARD MEMBER F. W. MURRAY:

JULY 4, 1968.

1. I DISSENT.

2. WHILE I AGREE THERE IS AMPLE EVIDENCE TO INDICATE MR. LAWSON'S HOSTILITY TO THE IDEA THAT THE RESPONDENT'S EMPLOYEES SHOULD BE REPRESENTED BY A TRADE UNION, I FIND ON THE OTHER HAND THAT THERE WAS EQUALLY AMPLE CAUSE FOR A LAY-OFF, AND I ACCEPT THE EVIDENCE SUBMITTED BY THE RESPONDENT AS TO THE REASONS WHY HE CHOSE THE FIVE COMPLAINANTS IN PARTICULAR FOR A LAY-OFF. THIS EVIDENCE INCLUDED A DETAILED EXPLANATION AS TO THE EXPERIENCE ON PARTICULAR JOBS AND MACHINES OF EMPLOYEES WHO HAD BEEN HIRED SINCE THE COMPLAINANTS WERE HIRED. THEIR WORK EXPERIENCE WAS COMPARED TO THAT OF THE COMPLAINANTS, AND THE WAY THE EVIDENCE UNFOLDED, IT IS QUITE CLEAR THAT THESE COMPARISONS WERE GIVEN CONSIDERATION IN SELECTING THE FIVE COMPLAINANTS FOR LAY-OFF.

3. MOREOVER, THERE IS NO EVIDENCE TO INDICATE THAT MR. LAWSON KNEW WHETHER OR NOT TWO, IF NOT THREE, OF THE COMPLAINANTS WERE EVER INTERESTED IN UNION REPRESENTATION, WHEREAS THERE IS EVIDENCE TO INDICATE THAT MR. LAWSON KNEW SEVERAL OTHER EMPLOYEES WHO WERE NOT LAID OFF WERE INDEED INTERESTED IN TRADE UNION REPRESENTATION. ONE IN PARTICULAR HE KNEW TO BE PREVIOUSLY, NOT ONLY A MEMBER OF THE INTERNATIONAL WOODWORKERS, BUT HE ALSO KNEW THAT THIS PARTICULAR PERSON HAD BEEN A MEMBER OF A NEGOTIATING COMMITTEE OF A UNIT OF EMPLOYEES EMPLOYED IN THE HUNTSVILLE AREA. THE EVIDENCE INDICATES THAT THIS KNOWLEDGE CAME TO HIM WHEN HE EXAMINED A SIGNED AGREEMENT BETWEEN THIS EMPLOYEE'S FORMER EMPLOYER AND THE INTERNATIONAL WOODWORKERS OF AMERICA.

4. HAVING ACCEPTED THE EVIDENCE THAT ALL THESE EMPLOYEES WERE SELECTED BECAUSE OF THEIR WORK EXPERIENCE AND FOUND WANTING, AS COMPARED WITH THOSE REMAINING, I DO NOT BELIEVE IT IS RELEVANT THAT MR. RAWN WAS SUBSEQUENTLY DISCHARGED. THE EVIDENCE GIVEN BY MR. LAWSON AS TO THE REASON WHY HE FINALLY ASKED FOR THE RETURN OF THE LAY-OFF NOTICE AND SUBSTITUTED A DISMISSAL NOTICE, NAMELY THAT HE FELT THE RECORD SHOULD BE "KEPT STRAIGHT" FOR UNEMPLOYMENT INSURANCE AND OTHER PURPOSES, IS ACCEPTABLE TO ME UNDER THE CIRCUMSTANCES. THE EVIDENCE CLEARLY SHOWS THAT MR. RAWN WAS SLATED ALONG WITH THE FOUR OTHER EMPLOYEES FOR LAY-OFF, AND THE MAJORITY CONCLUDES THAT MR. RAWN'S TERMINATION STATUS WAS CHANGED TO DISMISSAL ONLY AFTER THE COMPANY DISCOVERED HIS CONNECTION WITH THE UNION. I CAN ONLY CONCLUDE THAT IF MR. RAWN WAS "DISCHARGED IMMEDIATELY" UPON THE DISCOVERY OF HIS CONNECTION WITH THE UNION, THAT THE SLATED LAY-OFFS OF THE FIVE COMPLAINANTS (OF WHICH MR. RAWN WAS ONE) MUST HAVE BEEN FOR SOME OTHER REASON.

5. I CANNOT ACCEPT THE CONCLUSIONS REACHED IN THE MAJORITY DECISION WITH RESPECT TO THE RESPONDENT'S IMPLEMENTATION OF A WAGE INCREASE. THE EVIDENCE CLEARLY SHOWS THAT AT THE MEETING ON FEBRUARY 22ND, A NUMBER OF EMPLOYEES, INCLUDING SOME EXPERIENCED MACHINE OPERATORS SPOKE OUT IN CRITICISM OF THEIR THEN CURRENT WAGE RATES AND EXPRESSED THE OPINION THAT THEY NEEDED AN INCREASE IN THE LIGHT OF RISING LIVING COSTS. FACED WITH THIS EVIDENCE I CAN ONLY CONCLUDE THAT THE COMPANY HAD EVERY JUSTIFICATION FOR MAKING EVERY EFFORT TO INCREASE WAGES WHEREVER IT COULD AFFORD TO DO SO IN ORDER TO INDUCE THESE OPERATORS TO REMAIN IN ITS EMPLOYMENT, AND IF SUCH ADJUSTMENTS REPRESENTED TOO GREAT AN ECONOMIC BURDEN, IT COULD BE EASED IN PART BY REDUCING THE NUMBER OF EMPLOYEES TO BE SOMETHING MORE IN KEEPING WITH CURRENT PRODUCTION REQUIREMENTS.

6. I WOULD DIFFER WITH THE BOARD'S CONCLUSION CONCERNING THE RELATIVE POSITION OF EMPLOYEES AS OUTLINED IN PARAGRAPH 18. THE EVIDENCE CLEARLY INDICATED THAT IN THE EMPLOYER'S OPINION, OF THOSE PLACED ON INDEFINITE LAY-OFF, WHILE SOME WERE GOOD EMPLOYEES WHO HAD PERFORMED THEIR INDIVIDUAL JOBS WELL, THEY HAD NOT, BY THEIR WORK EXPERIENCE, EXHIBITED THAT THEY COULD DO OTHER JOBS EQUALLY AS WELL AS THOSE THE COMPANY DECIDED SHOULD REMAIN ON THE PAYROLL. IT SHOULD HARDLY BE NECESSARY TO OBSERVE THAT THIS COMPANY WAS NOT BOUND TO ANY AGREEMENT CONCERNING SENIORITY, AND ALL OF THE COMPLAINANTS ARE EMPLOYEES OF LESS THAN ONE YEAR'S SERVICE, AND NONE OF THE EMPLOYEES HAD MORE THAN FIFTEEN MONTHS' SERVICE AT THE TIME THIS COMPLAINT WAS FILED WITH THE BOARD. THE COMPANY AFTER ALL HAD ONLY STARTED OPERATIONS IN JANUARY OF 1967, AND THE LENGTH OF SERVICE OF ONE EMPLOYEE WITH ANOTHER DIFFERS ONLY IN DAYS AND WEEKS, NOT MONTHS OR YEARS. I ACCORDINGLY FAIL TO FIND THE SELECTION PROCESS CONTRARY TO ANY REASONABLE LABOUR RELATIONS PRACTICE IN THE ABSENCE OF AN ABSOLUTE LENGTH OF SERVICE RULE.

7. HAVING REGARD TO ALL OF THE EVIDENCE IN THIS CASE, I WOULD HAVE DISMISSED THE APPLICATION OF THE COMPLAINANT.

14439-68-U: THE BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 264 (COMPLAINANT) V. THE GREAT ATLANTIC AND PACIFIC TEA CO. LIMITED (KNOWN AS A. & P. FOOD STORES) (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: L. A. MACLEAN, NEIL GROCUIT FOR THE APPLICANT, AND D. CHURCHILL-SMITH, O. BOYCE FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFFE: JULY 19, 1968.

1. AT THE HEARING OF THIS MATTER ON JUNE 17TH, 1968, THE APPLICANT REQUESTED AN ADJOURNMENT AS MR. SABEAN, THE AGGRIEVED PERSON FAILED TO APPEAR, AND ALTHOUGH THE APPLICANT HAD OTHER WITNESSES TO CALL IT DID NOT WISH TO PROCEED IN HIS ABSENCE. IN THE CIRCUMSTANCES A MAJORITY OF THE BOARD RULED ORALLY AT THE HEARING THAT THE BOARD WOULD GRANT THE APPLICANT'S REQUEST FOR AN ADJOURNMENT ON THE BASIS THAT IT WOULD, WITHIN 48 HOURS OF THE DATE OF THE HEARING, SHOW CAUSE WHY THE BOARD SHOULD LIST THE MATTER FOR A FURTHER HEARING.

2. BY LETTER DATED JUNE 19TH THE APPLICANT ADVISED THE BOARD THAT THE REASON FOR SABEAN'S FAILURE TO APPEAR WAS HIS CONFUSION OF THE DATE WITH ANOTHER MATTER BEFORE THE BOARD INVOLVING THE SAME PARTIES AND THAT HE ATTENDED A MEETING AT THE UNEMPLOYMENT INSURANCE COMMISSION ON JUNE 17TH. THE BOARD ALSO RECEIVED THE RESPONDENT'S SUBMISSION IN THIS MATTER BY LETTER DATED JULY 2ND AND A FURTHER LETTER FROM THE APPLICANT OF THE SAME DATE.

3. IN PROCEEDINGS BEFORE THE BOARD AND PARTICULARLY IN CASES OF THIS NATURE, IT IS VERY IMPORTANT FOR THE PROPER AND EXPEDIENT DISPOSITION OF THE ISSUES THAT THE PARTIES BE READY AND ABLE TO PROCEED ON THE DATE SET FOR THE HEARING IN ORDER TO PREVENT ANY PARTY FROM BEING IMPROPERLY PREJUDICED. IN THE INSTANT CASE, THROUGH A DIRECTION OF THE BOARD, THE HEARING SCHEDULED FOR MAY 23RD WAS POSTPONED TO JUNE 17TH. HENCE, THE AGGRIEVED PERSON SHOULD HAVE HAD AMPLE NOTICE OF THE HEARING, AND COUNSEL FOR THE APPLICANT SAID THAT MR. SABEAN DID HAVE NOTICE. ON THE OTHER HAND, IN CONSIDERING THE REPRESENTATIONS OF THE PARTIES IN THIS REGARD, IT IS OUR VIEW THAT A SUFFICIENT EXPLANATION HAS BEEN GIVEN BY THE APPLICANT FOR THE AGGRIEVED PERSONS' ABSENCE SO AS TO CONTINUE THE HEARING OF THE COMPLAINT ON ITS MERITS.

4. IN THE CIRCUMSTANCES OF THIS CASE, HOWEVER, WHILE THE BOARD INTENDS TO CONSIDER THE APPLICATION ON ITS MERITS, IT WILL NOT ENTER-TAIN THE AGGRIEVED PERSON'S CLAIM, IF ANY, FOR COMPENSATION FOR LOSS OF EARNINGS AND OTHER BENEFITS, AS AND FROM JUNE 17TH, 1968.

5. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER H. F. IRWIN:

JULY 19, 1968.

I DISSENT.

COUNSEL AND REPRESENTATIVES OF THE COMPLAINANT WERE PRESENT AT THE COMMENCEMENT OF THE HEARING HELD ON JUNE 17TH, 1968. THE AGGRIEVED EMPLOYEE WAS NOT PRESENT MUCH TO THE SURPRISE AND CHAGRIN OF COUNSEL WHO ASKED FOR AN ADJOURNMENT FOR 48 HOURS TO ASCERTAIN WHY THE EMPLOYEE WAS NOT PRESENT AND SO ADVISE THE BOARD.

COUNSEL DID NOT REPLY TO THE BOARD. A REPRESENTATIVE OF THE COMPLAINANT INFORMED THE BOARD BY LETTER THAT THE AGGRIEVED EMPLOYEE CONFUSED THE DATE OF THE HEARING OF HIS COMPLAINT WITH THE DATES OF HEARINGS CONCERNING OTHER EMPLOYEES. HE ALSO STATED THE AGGRIEVED EMPLOYEE HAD BEEN REQUESTED TO VISIT THE UNEMPLOYMENT INSURANCE OFFICE AT 10.30 A.M. ON THE DATE OF THE HEARING.

IT WAS THE DUTY AND RESPONSIBILITY OF THE COMPLAINANT TO HAVE THE AGGRIEVED EMPLOYEE PRESENT AT THE HEARING IF IT WISHED HIM TO TESTIFY. I DO NOT THINK THE REASONS FOR NON-APPEARANCE ARE SUFFICIENT TO WARRANT THE CONTINUATION OF THE HEARING. FOR THESE REASONS I WOULD HAVE DISMISSED THE COMPLAINT.

14648-68-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA (COMPLAINANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: ANGEL D. RIVERA FOR THE COMPLAINANT,
J. N. MCKIBBON AND H. J. TRUNKS FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 17, 1968.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT WHEREIN THE COMPLAINANT ALLEGED THAT BYRON KAMEKA WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 48, 50, 52, 53 AND 57(1) OF THE LABOUR RELATIONS ACT. THE COMPLAINANT REQUESTS THE BOARD TO REINSTATE THE AGGRIEVED PERSON WITH FULL COMPENSATION FOR LOSS OF WAGES.

2. THE EVIDENCE ESTABLISHED THAT THE COMPLAINANT COMMENCED ITS CAMPAIGN TO ORGANIZE THE EMPLOYEES OF THE RESPONDENT SOME TIME DURING THE MONTH OF AUGUST 1967 AND SUBSEQUENTLY IN JANUARY 1968 A REPRESENTATION VOTE WAS TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT. THE COMPLAINANT'S APPLICATION FOR CERTIFICATION WAS DISMISSED FOLLOWING THE TAKING OF THE REPRESENTATION VOTE.

3. THE EVIDENCE FURTHER ESTABLISHED THAT ON MAY 24TH, 1968, THE AGGRIEVED PERSON WAS DISCHARGED BY THE RESPONDENT AND THE REASON GIVEN FOR THE DISCHARGE WAS HIS HABITUAL LATENESS AND ABSENTEEISM.

4. THE RESPONDENT PRODUCED ITS TIME CARDS FOR THE AGGRIEVED PERSON WHICH ESTABLISHED, AMONG OTHER THINGS, THAT THE AGGRIEVED PERSON HAD BEEN ABSENT FROM WORK FOR A TOTAL OF 166 HOURS BETWEEN JANUARY 1ST, 1968 AND THE DATE OF HIS DISCHARGE. IMMEDIATELY PRIOR TO HIS DISCHARGE THE AGGRIEVED PERSON INDICATED HIS INTENTION TO ABSENT HIMSELF FROM WORK FOR THE WHOLE OF THE WEEK FOLLOWING THE DATE OF HIS DISCHARGE. AFTER FIRST REVIEWING THE AGGRIEVED PERSON'S HISTORY OF ABSENTEEISM, THE RESPONDENT DISCHARGED MR. KAMEKA ON FRIDAY, MAY 24TH, 1968.

5. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT ALTHOUGH THERE WAS EVIDENCE WHICH INDICATED THAT THE RESPONDENT HAD EXHIBITED AN EMPLOYER'S CUSTOMARY CONCERN CONCERNING THE COMPLAINANT'S ATTEMPTS TO ORGANIZE ITS EMPLOYEES BETWEEN THE MONTH OF AUGUST 1967 AND THE DATE THE REPRESENTATION VOTE WAS TAKEN IN JANUARY 1968, THE BOARD FINDS ON THE EVIDENCE BEFORE IT THAT THE REAL REASON FOR THE DISCHARGE OF THE AGGRIEVED PERSON IN THIS MATTER WAS THE REASON GIVEN BY THE RESPONDENT. THE BOARD THEREFORE FINDS THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT BYRON KAMEKA WAS DISCHARGED BY THE RESPONDENT CONTRARY TO THE LABOUR RELATIONS ACT.

6. IT IS OF INTEREST TO NOTE THAT COUNSEL FOR THE COMPLAINANT, IN HIS ARGUMENT, STATED THAT "THERE IS NO DOUBT IN MY MIND THAT TRUNKS, THE BRANCH MANAGER, LET HIM GO BECAUSE HE WENT OVER HIS HEAD AND SAW MORISON" (THE DISTRICT MANAGER), CONCERNING HIS PROPOSED ABSENCE THE FOLLOWING WEEK. EVEN IF THE BOARD WERE TO ACCEPT THIS PROPOSITION, THE RETALITORY ACTION OF A SUPERVISOR AGAINST AN EMPLOYEE WHO WENT OVER THE SUPERVISOR'S HEAD IS NOT ACTIVITY CONTRARY TO THE LABOUR RELATIONS ACT.

THE COMPLAINT IS THEREFORE DISMISSED

14727-68-U: A.F. GUTSFELD, A. GUTSFELD'S WELDING, EXPERT BUILDUP & HARDFACING 13 LONDON STREET NORTH, HAMILTON ONTARIO (COMPLAINANT) v. INTERNATIONAL HARVESTER COMPANY (HAMILTON WORKS), AND THE UNITED STEELWORKERS OF AMERICA - UNION OFFICERS FROM THE LOCAL 2868 (MR. WM. SCANDLON AND MR. STEWARD COKE) OF THE NAMED UNION (RESPONDENTS).

BEFORE: G. W. REED, Q.C., AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JULY 15, 1968.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT COMPLAINS THAT THE RESPONDENTS HAVE VIOLATED SECTIONS 10, 36, 59 AND 59A OF THE ACT. IN ESSENCE, THE ALLEGATIONS IN THE COMPLAINT ARE THE SAME AS THOSE MADE IN A SERIES OF EARLIER COMPLAINTS COMMENCING IN 1962. THE EVENTS WHICH LED TO THE FILING OF THE FIRST COMPLAINT TOOK PLACE AS FAR BACK AS APRIL, 1959. IN ALL OF THE COMPLAINTS THE BOARD HAS HELD THAT RELIEF WAS NOT AVAILABLE UNDER SECTION 65 OR THAT THE FACTS ALLEGED DID NOT CONSTITUTE A VIOLATION OF ANY SECTION OF THE LABOUR RELATIONS ACT. IN ADDITION, THE BOARD IN THE EXERCISE OF ITS DISCRETION DECIDED THAT SINCE THE MATTERS ALLEGED HAD BEEN THE SUBJECT OF A GRIEVANCE UNDER A COLLECTIVE AGREEMENT, THE BOARD WOULD NOT ENTERTAIN THE COMPLAINT.

2. DEALING SPECIFICALLY WITH THE SECTIONS OF THE ACT WHICH THE COMPLAINANT IN THIS COMPLAINT ALLEGES THE RESPONDENTS HAVE VIOLATED, THERE IS NOTHING IN THE COMPLAINT WHICH IN ANY WAY SUGGESTS THAT SECTIONS 36 OR 59 OF THE ACT HAVE BEEN VIOLATED. IN THE FIRST COMPLAINT WHICH THIS COMPLAINANT MADE (SEE INTERNATIONAL HARVESTER COMPANY CASE, O.L.R.B. MONTHLY REPORT, MARCH 1963, P. 549), THE BOARD HELD THAT SECTION 10 OF THE ACT HAD NO RELEVANCE TO A COMPLAINT UNDER SECTION 65, AND, FURTHER, THAT EVEN IF THE COMPLAINANT COULD HAVE ESTABLISHED THE FACTS WHICH HE ALLEGED, HE WOULD NOT HAVE HAD GROUNDS TO PROCEED ON A VIOLATION OF SECTION 59A. THE ALLEGATIONS IN THE INSTANT CASE ARE SUBSTANTIALLY THE SAME AS THOSE IN THE FIRST COMPLAINT.

3. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD FINDS THAT THE COMPLAINT DOES NOT DISCLOSE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THIS COMPLAINT IS DISMISSED.

4. THE BOARD WILL NOT ENTERTAIN ANY FURTHER COMPLAINT FILED BY THE COMPLAINANT WITH RESPECT TO THE MATTERS DEALT WITH IN THE PRESENT COMPLAINT.

INDEXED ENDORSEMENTS - SECTION 47A

14533-68-M: CIVIC EMPLOYEES' LOCAL UNION #181, CANADIAN UNION OF PUBLIC EMPLOYEES OF THE CITY OF BRANTFORD (APPLICANT) V. SUPERIOR SANITATION SERVICES LIMITED, AND THE CORPORATION OF THE CITY OF BRANTFORD (RESPONDENTS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: MARIO HIKL, D. W. MCENTEE, EDWARD COOPER AND JOHN BRAGG FOR THE APPLICANT; JOHN P. SANDERSON, RON SILLS AND RALPH CARTER FOR SUPERIOR SANITATION SERVICES LIMITED; NO ONE APPEARING FOR THE CORPORATION OF THE CITY OF BRANTFORD.

DECISION OF THE BOARD: JULY 19, 1968.

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO SECTION 47(A) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT IS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT. THE APPLICANT ENTERED INTO A COLLECTIVE AGREEMENT WITH THE CORPORATION OF THE CITY OF BRANTFORD ON SEPTEMBER 27TH, 1967 COVERING CERTAIN EMPLOYEES OF THE CORPORATION WHICH WOULD ACCORDING TO ITS TERMS REMAIN IN EFFECT UNTIL APRIL 30TH, 1969, SUBJECT TO CERTAIN RENEWAL PROVISIONS.

2. THE FACTS ARE NOT IN DISPUTE IN THIS MATTER. ON OCTOBER 30TH, 1967, THE CORPORATION OF THE CITY OF BRANTFORD (HEREINAFTER REFERRED TO AS THE CORPORATION) ENTERED INTO AN AGREEMENT WITH SUPERIOR SANITATION SERVICES LIMITED (HEREINAFTER REFERRED TO AS SUPERIOR) FOR THE COLLECTION AND REMOVAL OF GARBAGE AND REFUSE, WHICH TO THE DATE OF THE AGREEMENT WAS PART OF THE MUNICIPAL BUSINESS. AS PART OF THE AGREEMENT, SUPERIOR PURCHASED 9 TRUCKS FORMERLY USED BY THE CORPORATION IN THE COLLECTION AND DISPOSAL OF GARBAGE, FOR THE CONSIDERATION OF \$35,000. OF 11 EMPLOYEES OF THE CORPORATION OF THE CITY OF BRANTFORD ENGAGED IN THIS WORK, 3 WERE SUBSEQUENTLY EMPLOYED BY SUPERIOR AND 8 REPLACED BY OTHER PERSONS. THE APPLICANT CONTENDS THAT THE AGREEMENT BETWEEN THE CORPORATION AND SUPERIOR FOR THE COLLECTION AND REMOVAL OF GARBAGE CONSTITUTE A "SALE OF BUSINESS" WITHIN THE MEANING OF SECTION 47(A) OF THE ACT AND IS THEREFORE ENTITLED TO GIVE SUPERIOR NOTICE OF ITS DESIRE TO BARGAIN. COUNSEL FOR SUPERIOR CONTENDS THAT THE AGREEMENT REFERRED TO ABOVE IS A CONTRACTING OUT ARRANGEMENT FOR THREE YEARS OF THE SERVICES TO COLLECT AND DISPOSE OF GARBAGE IN THE CITY OF BRANTFORD WHICH DOES NOT CONSTITUTE A SALE OF BUSINESS WITHIN THE MEANING OF SECTION 47(A). HE SUBMITS THAT THE SALE OF THE TRUCKS WAS MERELY A SALE OF ASSETS AND INCIDENTAL TO THE CONTRACT FOR GARBAGE DISPOSAL WHICH DOES NOT AMOUNT TO A DISPOSAL OF A BUSINESS OR PART THEREOF.

3. THE RELEVANT PARTS OF SECTION 47(A) OF THE ACT IN THIS MATTER ARE AS FOLLOWS:

47(A) -- (1) IN THIS SECTION,

(A) "BUSINESS" INCLUDES A PART OR PARTS THEREOF;

(B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY

OTHER MANNER OF DISPOSITION, AND "SOLD" AND "SALE" HAVING CORRESPONDING MEANINGS.

(2) WHERE AN EMPLOYER WHO IS BOUND OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 11 OR 40 SELLS HIS BUSINESS, THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS, AND THE TRADE UNION IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW OF MAKING A COLLECTIVE AGREEMENT, AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11.

THE APPLICANT IN ORDER TO SUCCEED IN ITS APPLICATION, MUST ESTABLISH THAT THERE WAS A SALE OF A BUSINESS OR A PART THEREOF AND SALE INCLUDES "LEASES, TRANSFERS, AND ANY OTHER MANNER OF DISPOSITION". IT IS CLEAR THAT PRIOR TO OCTOBER 30TH, 1967, THE CORPORATION CARRIED OUT, THROUGH ITS WORKS DEPARTMENT, THE GARBAGE DISPOSAL SERVICES WITHIN THE COMMUNITY. FOR THIS PURPOSE IT EMPLOYED PERSONNEL AND OWNED AND OPERATED CERTAIN EQUIPMENT CONSISTING OF AT LEAST THE 9 GARBAGE TRUCKS REFERRED TO IN THE AGREEMENT WITH SUPERIOR. THE COLLECTION AND DISPOSAL OF GARBAGE CAN BE SAID TO BE PART OF THE BUSINESS OF A MUNICIPALITY IN THAT IT IS ONE OF ITS OBLIGATIONS UNDER THE MUNICIPAL ACT. FURTHER, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 3 79(1)(75) OF THE MUNICIPAL ACT A MUNICIPALITY IS EXPRESSLY PERMITTED TO "CONTRACT WITH ANY PERSON FOR THE COLLECTION, AND DISPOSAL BY HIM OF ASHES, GARBAGE AND OTHER REFUSE UPON SUCH TERMS AND CONDITIONS AS MAY BE DEEMED EXPEDIENT...". THE MUNICIPALITY MUST SUPPLY GARBAGE DISPOSAL SERVICES AND THE MUNICIPAL ACT HAS AUTHORIZED THE MUNICIPALITY TO CONTRACT OUT THIS SERVICE IF IT SO DESIRES. WHILE THEREFORE, THE SUBJECT OF THE AGREEMENT WITH SUPERIOR IS A PART OF THE MUNICIPAL BUSINESS, THE QUESTION REMAINS AS TO WHETHER IT WAS SOLD WITHIN THE MEANING OF THE ACT.

4. IN THE GIBSCO TRANSPORT LIMITED CASE, BOARD FILE 10163-64-M, THE BOARD IN DEALING WITH A CONTRACTING OUT SITUATION SAID AT PAGE 3 OF ITS ENDORSEMENT:

THE TRUCKS WITH WHICH GRANT'S BUSINESS IS CARRIED ON REMAIN THE PROPERTY OF GRANT AND THE HAULAGE FOR WHICH THEY ARE USED IS ON GRANT'S ACCOUNT. GRANT HAS NOT DISPOSED OF ANY OF ITS BUSINESS OR OF ITS ASSETS BUT HAS RATHER CHANGED ITS METHOD OF CARRYING ON ITS BUSINESS AND ITS METHOD OF UTILIZING THESE ASSETS. BUT ANOTHER WAY, GRANT HAS ENTRUSTED TO AN AGENT THE PERFORMANCE OF

CERTAIN TASKS WHICH GRANT HAD FORMERLY PERFORMED BY ITS OWN EMPLOYEES. THESE TASKS CONTINUE TO BE PERFORMED AS PART OF GRANT'S "BUSINESS" ALTHOUGH THEY ARE NOW PERFORMED BY EMPLOYEES OF GRANT'S AGENT.

THE ABOVE MENTIONED CASE IS ON ALL FOURS WITH THE INSTANT CASE WITH THE EXCEPTION THAT THE CORPORATION SOLD TO SUPERIOR ITS 9 GARBAGE TRUCKS. IN OUR OPINION, HOWEVER, THE TRUCKS THEMSELVES DO NOT CONSTITUTE THE BUSINESS INVOLVED BUT ARE ONLY ASSETS USED IN THE PERFORMANCE OF THE COLLECTION AND DISPOSAL OF GARBAGE BY THE MUNICIPALITY. "BUSINESS" HAS BEEN DEFINED AS MEANING THE TOTALITY OF THE UNDERTAKING UNDER CONSIDERATION AND THE SALE OF ASSETS SUCH AS MACHINERY, TOOLS AND TRUCKS DO NOT NECESSARILY COMPRISE THE BUSINESS. IN THE CIRCUMSTANCES OF THIS CASE THE CORPORATION HAS NOT DISPOSED OF PART OF ITS BUSINESS BUT HAS MERELY CHANGED ITS METHOD OF CARRYING ON SUCH BUSINESS BY CONTRACTING WITH AN AGENT TO PERFORM THE TASKS WHICH IT FORMERLY PERFORMED BY ITS OWN EMPLOYEES.

5. IT IS ALSO SIGNIFICANT IN THIS CASE, THAT IN THE SPECIFICATIONS SET OUT IN THE AGREEMENT WITH SUPERIOR ALL WORK PERFORMED UNDER THE CONTRACT WILL BE SUPERVISED BY AND MUST BE PERFORMED TO THE SATISFACTION OF THE CITY ENGINEER. FURTHER SECTION 12 OF THE SAID SPECIFICATIONS IS AS FOLLOWS:

12. - DISCHARGE OF EMPLOYEE

SHOULD ANY OVERSEER, MECHANIC, DRIVER OR WORKMAN EMPLOYED ON OR ABOUT THE WORK OR IN CONNECTION THEREWITH GIVE ANY JUST CAUSE FOR COMPLAINT (OF WHICH THE CITY ENGINEER SHALL BE THE SOLE JUDGE) THE CITY ENGINEER SHALL NOTIFY THE CONTRACTOR IN WRITING SPECIFYING THE REASONS THEREFORE AND THE CONTRACTOR SHALL DISMISS SUCH PERSON FORTHWITH AND HE SHALL NOT AGAIN BE EMPLOYED BY THE CONTRACTOR ON ANY CORPORATION WORK WITHOUT THE CONSENT IN WRITING OF THE CITY ENGINEER.

IT IS QUITE APPARENT FROM THE ABOVE THAT THE CORPORATION RETAINS A DIRECT INTEREST AND RESPONSIBILITY IN THE MANNER IN WHICH THE BUSINESS OF THE GARBAGE COLLECTION AND DISPOSAL IS CARRIED OUT BY SUPERIOR. THIS IS NOT CONSISTENT WITH THE APPLICANT'S CONTENTION THAT THE CORPORATION DISPOSED OF ANY OF ITS UNDERTAKING.

6. WE, THEREFORE FIND ON ALL THE EVIDENCE BEFORE US AND HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES THAT WHAT TRANSPIRED BETWEEN THE CORPORATION AND SUPERIOR WAS NOT A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47(A) OF THE ACT

7. THE APPLICATION IS ACCORDINGLY DISMISSED.

14596-68-M: LAKE OF THE WOODS DISTRICT HOSPITAL, KENORA GENERAL HOSPITAL, ST. JOSEPH HOSPITAL (APPLICANTS) V. CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 822 (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: VERNON C. KING AND RICHARD A. SCHNEIDER FOR THE APPLICANTS AND M. HIKL AND A. RISELEY FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 11, 1968.

1. THIS IS AN APPLICATION BY LAKE OF THE WOODS DISTRICT HOSPITAL, HEREINAFTER REFERRED TO AS THE APPLICANT, UNDER SECTION 47A OF THE LABOUR RELATIONS ACT.
2. THE APPLICANT WAS INCORPORATED BY PRIVATE ACT OF THE LEGISLATURE WHICH CAME INTO FORCE ON MAY 1, 1968. THE PREAMBLE TO THE BILL RECITES THAT THE BOARD OF DIRECTORS OF KENORA GENERAL HOSPITAL, HEREINAFTER REFERRED TO AS KENORA GENERAL, AND THE BOARD OF DIRECTORS OF ST. JOSEPH HOSPITAL, HEREINAFTER REFERRED TO AS ST. JOSEPH'S, HAD PETITIONED THE LEGISLATURE FOR SPECIAL LEGISLATION PROVIDING FOR THE MERGER OF CERTAIN ASSETS OF KENORA GENERAL AND ST. JOSEPH'S. THE PREAMBLE RECITES FURTHER THAT THE PETITIONERS REQUESTED THAT THE OWNERSHIP, GENERAL MANAGEMENT, OPERATION AND MAINTENANCE OF KENORA GENERAL AND ST. JOSEPH'S BE ENTRUSTED TO A CORPORATION TO BE CREATED AND TO BE KNOWN AS "LAKE OF THE WOODS DISTRICT HOSPITAL".
3. SECTION 8 OF THE ACT VESTS ALL ASSETS OF EVERY NATURE AND KIND OF THE KENORA GENERAL IN THE APPLICANT AND SECTION 9 DOES THE SAME THING WITH RESPECT TO CERTAIN SPECIFIC ASSETS, INCLUDING REAL PROPERTY, HOSPITAL SUPPLIES AND FURNITURE AND EQUIPMENT, OF ST. JOSEPH'S.
4. SECTION 14 OF THE ACT DISSOLVES KENORA GENERAL. ST. JOSEPH HOSPITAL WAS A PUBLIC HOSPITAL OWNED AND OPERATED BY LA COMMUNAUTE DES SOEURS DI CHARITE DE LA PROVIDENCE AND THEREFORE WAS NOT DISSOLVED. ALTHOUGH, AS NOTED ABOVE, CERTAIN ASSETS OF ST. JOSEPH'S WERE VESTED IN THE APPLICANT, THE HOSPITAL BUILDING ITSELF WAS NOT SO INCLUDED AND THE EVIDENCE IS THAT ~~THIS~~ BUILDING IS NOW LEASED BY THE APPLICANT.
5. THE APPLICANT HAS TAKEN OVER THE OPERATION OF BOTH HOSPITALS. AT THE PRESENT TIME, HOWEVER, WHILE SOME INTEGRATION HAS TAKEN PLACE AT THE MANAGEMENT LEVEL OF THE TWO HOSPITALS (WHICH ARE ONLY ABOUT 300 YARDS APART), THERE HAS BEEN NO INTEGRATION OF EMPLOYEES OF THE TWO FORMER INSTITUTIONS WITH THE POSSIBLE EXCEPTION OF ONE SINGLE EMPLOYEE. ALTHOUGH THE SOLICITOR FOR THE APPLICANT REQUESTED THE BOARD TO FIND THAT THERE HAS BEEN AN INTERMINGLING OF EMPLOYEES WITHIN THE MEANING OF SECTION 47A(5) OF THE LABOUR RELATIONS ACT, HAVING REGARD TO PREVIOUS BOARD POLICIES, WE ARE UNABLE TO MAKE SUCH A FINDING ON THE EVIDENCE BEFORE US IN THIS CASE. (SEE OSHAWA WHOLESALE LIMITED CASE, O.L.R.B.

MONTHLY REPORT, FEBRUARY, 1965, P. 584; MOUNTAIN VIEW DAIRY LTD. ET AL., O.L.R.B. MONTHLY REPORT, FEBRUARY, 1967, P. 911)

6. IT SHOULD BE NOTED AT THIS POINT THAT THERE WAS NO SUGGESTION MADE TO THE BOARD THAT SUBSECTION 10 OF SECTION 47A OF THE ACT HAD ANY BEARING ON THIS APPLICATION.

7. THE RESPONDENT WAS PARTY TO A COLLECTIVE AGREEMENT DATED JANUARY 1, 1968, WITH KENORA GENERAL COVERING ALL EMPLOYEES AT KENORA WITH CERTAIN EXCEPTIONS WHICH WILL BE SPELLED OUT IN MORE DETAIL LATER IN THESE REASONS. APART FROM STATIONARY ENGINEERS, THE EMPLOYEES OF ST. JOSEPH'S WERE NOT REPRESENTED BY A TRADE UNION FOR COLLECTIVE BARGAINING PURPOSES. NO QUESTION ARISES IN THIS APPLICATION WITH RESPECT TO STATIONARY ENGINEERS.

8. THE MAIN QUESTION TO BE DETERMINED IN THIS APPLICATION IS WHETHER THE EVENTS REFERRED TO ABOVE CONSTITUTE A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A(1) OF THE ACT, WHICH PROVIDES AS FOLLOWS:

47A-(1) IN THIS SECTION,

(A) "BUSINESS" INCLUDES A PART OR PARTS THEREOF;

(B) "SELLS" INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION, AND "SOLD" AND "SALE" HAVE CORRESPONDING MEANINGS.

THE TERM "BUSINESS" PRESENTS NO PARTICULAR PROBLEM. (SEE ON THIS BOARD OF TRUSTEES OF THE ROMAN CATHOLIC SEPARATE SCHOOLS FOR THE CITY OF WINDSOR, O.L.R.B. MONTHLY REPORT, MARCH 1966, P. 920.) HOWEVER, COUNSEL FOR THE APPLICANT WHILE, CONTENT TO LET THE BOARD MAKE A DECISION ON THIS POINT, EXPRESSED SOME DOUBT AS TO WHETHER THERE WAS IN FACT A SALE WITHIN THE MEANING OF THE SECTION. COUNSEL WAS CONCERNED WITH THE LANGUAGE OF THE ACT WHICH SPEAKS OF A "VESTING" OF THE ASSETS.

9. THE IMPORTANT WORDS IN THE DEFINITION OF "SALE" FOR PRESENT PURPOSES ARE "ANY OTHER MANNER OF DISPOSITION". IT IS CLEAR FROM THE PREAMBLE TO THE ACT THAT KENORA GENERAL AND ST. JOSEPH'S WERE MAKING A DISPOSITION OF ASSETS BY PETITIONING THE LEGISLATURE FOR A PRIVATE BILL TO ACCOMPLISH THIS PURPOSE. IN OUR VIEW, THIS CONSTITUTES A DISPOSITION WITHIN THE MEANING OF SECTION 47A(1)(B) AND CONSEQUENTLY SUBSECTION 2 OF THE SAID SECTION IS APPLICABLE. HOWEVER, SUBSECTION 2 APPLIES ONLY TO A SITUATION WHERE THE PREDECESSOR EMPLOYER WAS BOUND BY OR WAS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAD BEEN CERTIFIED OR WAS ENTITLED TO GIVE NOTICE UNDER SECTIONS 11 OR 40 OF THE LABOUR

RELATIONS ACT. CONSEQUENTLY, WE ARE CONCERNED HERE ONLY WITH THE BARGAINING RIGHTS OF THE RESPONDENT STEMMING FROM THE COLLECTIVE AGREEMENT WHICH IT HAD WITH KENORA GENERAL.

10. HAVING REGARD TO THE ABOVE CONSIDERATIONS AND TO THE PROVISIONS OF SUBSECTIONS 2 AND 3 OF SECTION 47A OF THE LABOUR RELATIONS ACT, THE BOARD DECLARES THAT THE RESPONDENT IS THE BARGAINING AGENT FOR ALL EMPLOYEES OF THE APPLICANT IN THE PREMISES FORMERLY OCCUPIED BY THE KENORA GENERAL HOSPITAL IN KENORA SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND PERSONS FORMERLY BOUND BY A COLLECTIVE AGREEMENT BETWEEN THE KENORA GENERAL HOSPITAL AND THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL No. 940, DATED JUNE 17, 1960.

FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL, CARDIOLOGICAL AND PHOTOGRAPHICAL TECHNICIANS, ALSO EXCLUDED SHALL BE LIBRARIANS, MEDICAL SOCIAL WORKERS, STUDENT THERAPISTS, UNDERGRADUATE THERAPISTS, GYMNASTISTS, AND ALL PRACTICAL NURSES AND CERTIFIED NURSING ASSISTANTS.

THE BOARD FURTHER DECLARES THAT EMPLOYEES OF THE APPLICANT FORMERLY EMPLOYED BY ST. JOSEPH'S AND PRESENTLY WORKING IN THE FORMER ST. JOSEPH HOSPITAL ARE NOT INCLUDED IN THE ABOVE DESCRIBED BARGAINING UNIT.

11. IT WAS POINTED OUT TO THE PARTIES AT THE HEARING OF THIS APPLICATION THAT SUBSECTION 5 OF SECTION 47A WAS NOT LIMITED IN ITS APPLICATION TO A SITUATION IMMEDIATELY FOLLOWING A SALE OF A BUSINESS. IN OTHER WORDS, THAT SUBSECTION CONTEMPLATES THAT AN INTERMINGLING MAY TAKE PLACE SOME TIME AFTER SUCH A SALE IN WHICH CASE AN APPLICATION COULD BE MADE TO THE BOARD. WE STRESS, HOWEVER, THAT EVEN IF THE APPLICANT WERE TO INTERMINGLE THE FORMER EMPLOYEES OF KENORA GENERAL AND ST. JOSEPH'S, WE ARE MAKING NO FINDING THAT SUBSECTION 5 WOULD NECESSARILY APPLY TO SUCH A CASE. THIS IS A MATTER THAT WOULD HAVE TO BE DEALT WITH IN A SUBSEQUENT APPLICATION. REFERENCE IS MADE TO THE REASONS FOR DECISION OF DEPUTY VICE-CHAIRMAN L. A. MACLEAN DATED DECEMBER 7, 1965 IN PREMIER AUTOMOTIVE UNITS LTD. ET AL., O.L.R. B. MONTHLY REPORT, DECEMBER, 1965, P. 625.

INDEXED ENDORSEMENTS - SECTION 79(2)

12960-67-M: RETAIL STORE EMPLOYEES UNION, LOCAL 206, CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. CENTRAL SUPER-MARKETS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: IAN SCOTT AND THOMAS L. REES FOR THE
APPLICANT, HYMAN SOLOWAY, Q.C., AND WARREN K. WINKLER FOR THE
RESPONDENT AND SHOPPERS CITY LIMITED.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER:
JULY 11, 1968.

1. THIS IS AN APPLICATION UNDER SECTION 79(2) OF THE LABOUR RELATIONS ACT WHEREIN THE BOARD HAS BEEN REQUESTED TO DETERMINE WHETHER CERTAIN PERSONS EMPLOYED AT A STORE LOCATED AT THE INTERSECTION OF BASELINE ROAD AND WOODROFFE AVENUE, OTTAWA, AND AT A STORE LOCATED AT THE INTERSECTION OF BLAIR ROAD AND THE QUEENSWAY, OTTAWA, ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSES OF THE ACT. THE APPLICANT AND THE RESPONDENT ARE PARTIES TO A COLLECTIVE AGREEMENT WHEREIN THE APPLICANT IS RECOGNIZED AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT IN THE STORES OWNED AND/OR OPERATED BY THE RESPONDENT IN THE GREATER OTTAWA DISTRICT (INCLUDING EASTVIEW) WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE QUESTION HAVING ARISEN DURING THE PERIOD OF OPERATION OF THE COLLECTIVE AGREEMENT AS TO THE STATUS OF THE EMPLOYEES REFERRED TO ABOVE, THIS MATTER WAS REFERRED TO THE BOARD.
2. THE EVIDENCE ESTABLISHED THAT THE STORES ABOVE REFERRED TO WERE AT ONE TIME OPERATED BY SHOPPERS CITY LIMITED. SHOPPERS CITY LIMITED WAS GIVEN NOTICE OF THESE PROCEEDINGS AND INVITED TO PARTICIPATE.
3. A HEARING WAS HELD IN THIS MATTER AT OTTAWA ON JANUARY 4TH, 1968, AND AT THE SUGGESTION OF THE PARTIES, THE BOARD INVITED THE PARTIES TO SUBMIT IN WRITING THEIR ARGUMENT AS TO WHAT EFFECT SHOULD BE GIVEN TO THE EVIDENCE IN THIS CASE. AFTER A LENGTHY DELAY, WHICH THE PARTIES AGREED TO, WRITTEN SUBMISSIONS WERE FINALLY RECEIVED BY THE BOARD IN JUNE 1968.
4. THE APPLICANT CALLED EVIDENCE WHICH ESTABLISHED THAT THE RESPONDENT AND SHOPPERS CITY LIMITED ARE RELATED COMPANIES. THE STORES IN QUESTION WERE ORIGINALLY OPERATED BY SHOPPERS CITY LIMITED. THE APPLICANT AND SHOPPERS CITY LIMITED WERE PARTIES TO A COLLECTIVE AGREEMENT COVERING "ALL EMPLOYEES IN THE BAKERY DEPARTMENT OF THE EMPLOYER FOR THE EMPLOYER'S FOODMART IN OTTAWA AND NEPEAN TOWNSHIP"

WITH CERTAIN EXCEPTIONS. THE FOODMART REFERRED TO WAS THE BASELINE STORE WITH WHICH WE ARE HERE CONCERNED. THE UNION DUES CHECKED OFF IN ACCORDANCE WITH THE PROVISIONS OF THAT COLLECTIVE AGREEMENT, FOR THE MONTHS OF NOVEMBER AND DECEMBER 1966 AND JANUARY 1967, WERE REMITTED TO THE APPLICANT BY THE RESPONDENT'S CHEQUE RATHER THAN BY A CHEQUE FROM SHOPPERS CITY LIMITED AS WAS THE FORMER PRACTICE.

5. PRIOR TO NOVEMBER 1966, A BRANCH OF THE BANK OF MONTREAL WAS USED BY SHOPPERS CITY LIMITED TO LOOK AFTER THE EMPLOYEES' PAYROLL AT THE BASELINE STORE. THE PRACTICE WAS FOR SHOPPERS CITY LIMITED TO FORWARD TO THE BANK A PAYROLL LIST SHOWING THE NAMES OF THE EMPLOYEES AND THE AMOUNT OF THEIR PAY. THIS PAYROLL LIST WAS ACCOMPANIED BY A CHEQUE IN THE SUM OF THE TOTAL OF THE AMOUNTS SHOWN OPPOSITE EACH EMPLOYEE'S NAME. THE BANK WOULD APPORTION THE AMOUNT ON THE CHEQUE TO EACH OF THE EMPLOYEE'S INDIVIDUAL BANK ACCOUNTS. IN DECEMBER 1966, A CHANGE TOOK PLACE IN THAT THE PAYROLL CHEQUE WAS MADE BY CENTRAL SUPERMARKETS LIMITED RATHER THAN SHOPPERS CITY LIMITED. ALTHOUGH CENTRAL SUPERMARKETS LIMITED BECAME THE PAYER OF THE EMPLOYEES FROM AND AFTER DECEMBER 1966, THE PAYROLL PROCEDURES WITH THE BANK REMAINED THE SAME. THE PARTIES AGREED THAT THE SAME BANKING ARRANGEMENTS WERE MADE WITH RESPECT TO THE EMPLOYEES AT THE QUEENSWAY STORE.

6. DURING THE LATTER PART OF 1966, THE EMPLOYEES AT THE STORES WERE INSTRUCTED TO ADVISE ANY CUSTOMERS WHO WISHED TO PAY FOR THE GROCERIES BY CHEQUE THAT THEY SHOULD MAKE THEIR CHEQUES PAYABLE TO CENTRAL SUPERMARKETS LIMITED RATHER THAN SHOPPERS CITY LIMITED AS HAD BEEN FORMERLY DONE.

7. DURING NOVEMBER 1966, EMPLOYEES WERE INSTRUCTED TO OBTAIN CHEQUES FROM SUPPLIERS FOR THE RETURN OF DAMAGED GOODS PAYABLE TO THE RESPONDENT RATHER THAN SHOPPERS CITY LIMITED AS HAD BEEN THE CASE PRIOR TO THAT TIME. DURING THIS PERIOD, COUNTER CHEQUES SUPPLIED TO CUSTOMERS OF THE STORES HAD THE NAME OF THE RESPONDENT PRINTED ON THEM AS PAYEE RATHER THAN SHOPPERS CITY LIMITED.

8. WHILE THE APPLICATION FOR EMPLOYMENT FORMS CONTINUED TO BEAR THE NAME OF SHOPPERS CITY LIMITED, THESE FORMS WERE ALSO USED BY EMPLOYEES OF ANOTHER RELATED COMPANY, TOP VALU GAS MARTS. A SIMILAR ARRANGEMENT EXISTS WITH RESPECT TO UNEMPLOYMENT INSURANCE.

9. THE RESPONDENT CALLED NO EVIDENCE TO REFUTE THE TESTIMONY OF THE APPLICANT'S WITNESSES OR TO EXPLAIN AND CLARIFY THE NATURE OF THE CHANGES THAT TOOK PLACE DURING THE LATTER PART OF 1966.

10. HAVING ASSESSED THE EVIDENCE ADDUCED IN THIS MATTER IN LIGHT OF THE WRITTEN ARGUMENT SUBMITTED BY THE PARTIES, THE BOARD FINDS THAT WHILE SHOPPERS CITY LIMITED ORIGINALLY OPERATED THE STORES IN QUESTION AND WAS THE EMPLOYER OF THE EMPLOYEES WORKING AT THE STORES, A CHANGE TOOK PLACE DURING THE LATTER PART OF 1966

AND AS A RESULT OF THIS CHANGE THE RESPONDENT TOOK OVER THE OPERATION OF THE STORES. NOT ONLY DID THE RESPONDENT TAKE OVER THE PAYROLL OF THE EMPLOYEES, THE RESPONDENT ALSO ASSUMED THE OBLIGATION OF REMITTING UNION DUES PAYABLE UNDER AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND SHOPPERS CITY LIMITED FOR CERTAIN EMPLOYEES FOR ONE OF THE STORES IN QUESTION. AS A RESULT OF THE CHANGES WHICH WERE MADE DURING NOVEMBER AND DECEMBER 1966, WITH RESPECT TO THE MANNER IN WHICH CUSTOMERS WOULD PAY FOR THEIR PURCHASES BY CHEQUE AND SUPPLIERS WOULD MAKE REIMBURSEMENT FOR THE RETURN OF DAMAGED GOODS, ON THE EVIDENCE BEFORE US WE MUST FIND THAT THE RESPONDENT COMMENCED HOLDING ITSELF OUT TO THE PUBLIC, INCLUDING CUSTOMERS AND SUPPLIERS, THAT IT WAS CARRYING ON THE BUSINESS OF OPERATING THE TWO SUPERMARKETS IN QUESTION.

11. IN VIEW OF THE EVIDENCE CITED ABOVE AND WHILE NO SINGLE FACTOR WOULD NECESSARILY IN ITSELF BE DETERMINATIVE OF THE ISSUE, HOWEVER, IN THE ABSENCE OF ANY EVIDENCE FROM THE RESPONDENT OR SHOPPERS CITY LIMITED WHICH MIGHT HAVE QUALIFIED, EXPLAINED OR CLARIFIED THE EVIDENCE BEFORE US, WE MUST FIND THAT IT IS AN ESCAPABLE INFERENCE THAT THE EMPLOYEES IN THE STORES, THE OPERATION OF WHICH THE RESPONDENT TOOK OVER DURING THE LATTER PART OF 1966, BECAME THE EMPLOYEES OF THE RESPONDENT AT THAT TIME.

12. FOR THE REASONS ENUNCIATED BY THE BOARD IN ITS DECISION IN THIS CASE DATED JUNE 23RD, 1967, AND FOR THE REASONS SET OUT ABOVE, WE THEREFORE FIND THAT THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ARE EMPLOYEES OF THE RESPONDENT FOR THE PURPOSE OF THE LABOUR RELATIONS ACT.

DECISION OF BOARD MEMBER R. W. TEAGLE: JULY 11, 1968.

I DISSENT.

BRIEFLY, THE MAJORITY DECISION APPEARS TO BE BASED ON THE FOLLOWING EVIDENCE:

- (1) UNION DUES PAID BY CENTRAL SUPERMARKETS LIMITED.
- (2) PAYROLL CHEQUES DEPOSITED IN BANK OF MONTREAL BY CENTRAL SUPERMARKETS LIMITED.
- (3) SUPPLIERS' REFUNDS MADE PAYABLE TO CENTRAL SUPERMARKETS LIMITED.
- (4) COUNTER CHEQUES FOR CUSTOMERS IN NAME OF CENTRAL SUPERMARKETS LIMITED.
-) APPLICATIONS FOR EMPLOYMENT IN NAME OF SHOPPERS CITY LIMITED ALSO USED BY OTHER STORES, INCLUDING CENTRAL SUPERMARKETS LIMITED.

- (6) UNEMPLOYMENT INSURANCE SAME AS APPLICATIONS FOR EMPLOYMENT.
- (7) NO EVIDENCE CALLED BY THE RESPONDENT TO EXPLAIN CHANGES.

REGARDING THE PAYING OR RECEIVING OF MONEY BY CENTRAL SUPERMARKETS LIMITED, IN UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1190 AND GOLDLIST CONSTRUCTION LIMITED CASE, BOARD FILE No. 12089-66-R, THE BOARD HELD THAT THE FACTOR OF PAYMENT IS NOT NECESSARILY DETERMINATIVE OF AN EMPLOYMENT RELATIONSHIP. THE BOARD WENT ON TO HOLD THAT THE CONSENSUAL ELEMENT IS NECESSARY TO THE EMPLOYER-EMPLOYEE RELATIONSHIP.

BEFORE LEAVING THIS ASPECT OF THE CASE WE WISH TO MAKE IT CLEAR THAT THE COMPLEXITIES OF MODERN BUSINESS ORGANIZATION, INCLUDING NEW AND EFFICIENT ACCOUNTING PRACTICES AND PROCEDURES, DO NOT LESSEN THE NECESSITY OF THE CONTRACTUAL OR CONSENSUAL ELEMENT IN THE EMPLOYER-EMPLOYEE RELATIONSHIP AS DESCRIBED IN CONSIDERABLE DETAIL IN THE LOBLAW CASE. MORE SPECIFICALLY, A SIMPLE BOOK TRANSACTION BY EMPLOYER A WHEREBY AN EMPLOYEE IS TRANSFERRED TO THE WORK FORCE OF EMPLOYER B, OR A DIRECTION BY A FOREMAN OF EMPLOYER A TO AN EMPLOYEE TO REPORT FOR WORK ON THE PROJECT OF EMPLOYER B DO NOT BY THEMSELVES MAKE THE EMPLOYEE IN QUESTION AN EMPLOYEE OF EMPLOYER B FOR THE PURPOSES OF THE LABOUR RELATIONS ACT. SOME OF THE EVIDENCE HEARD IN THIS CASE LEAVES US WITH THE DISTINCT IMPRESSION THAT, FOR EXAMPLE, IN THE CASE OF TRANSFERS, THE CONSENSUAL ELEMENT SO NECESSARY IN THE EMPLOYER-EMPLOYEE RELATIONSHIP IS OVERLOOKED OR FORGOTTEN IN THE DRIVE TO CENTRALIZE ACCOUNTING PROCEDURES.

THE EMPLOYEES IN QUESTION APPLIED FOR AND WERE ACCEPTED INTO EMPLOYMENT BY SHOPPERS CITY LIMITED. NO CHANGE IN THE INITIAL CONTRACTUAL RELATIONSHIP WITH SHOPPERS CITY HAS EVER BEEN MADE. APPLYING THE FACTS OF THIS CASE AS SET OUT IN THE LOBLAWS AND GOLDLIST CASES, THE EMPLOYER OF THESE EMPLOYEES IS SHOPPERS CITY LIMITED.

REGARDING ITEM 7 ABOVE IT HAS BEEN MY OPINION THAT IT IS UP TO THE APPLICANT TO PROVE HIS CASE AND THERE IS NO REQUIREMENT FOR THE RESPONDENT TO PRODUCE EVIDENCE IF THE APPLICANT FAILS TO MAKE OUT A CASE AND I WOULD SO FIND.

IN THE TOWNSHIP OF SCARBOROUGH CASE, BOARD FILE No. 11892-66-M, THE BOARD HELD THAT RELIEF UNDER SECTION 79(2) IS NOT AVAILABLE TO AN APPLICANT WHERE THE PURPOSE OF THE APPLICATION IS TO PAVE THE WAY FOR WHAT, IN EFFECT, IS A REQUEST FOR VOLUNTARY RECOGNITION OF A UNION AS BARGAINING AGENT FOR A GROUP OF EMPLOYEES NOT PREVIOUSLY COVERED BY A COLLECTIVE AGREEMENT, AS A SUBSTITUTE FOR A CERTIFICATE GRANTED BY THE BOARD.

CERTIFICATION PROCEEDINGS WERE OPEN TO THE APPLICANT IN THIS CASE BUT THIS PROCEDURE WAS NOT FOLLOWED AND WE ARE LEFT IN THE POSITION OF NOT KNOWING WHAT THE TRUE WISHES OF THE EMPLOYEES ARE.

FOR THE ABOVE REASONS I WOULD DISMISS THE APPLICATION.

13594-67-M: TOBACCO WORKERS' INTERNATIONAL UNION, LOCAL 319 (APPLICANT)
V. ROTHMANS OF PALL MALL CANADA LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J. SACK AND SEAN KELLY FOR THE APPLICANT,
JOHN P. SANDERSON AND GORDON SHAMANSKI FOR THE RESPONDENT.

DECISION OF THE BOARD: JULY 24, 1968.

1. THE APPLICANT HAS APPLIED PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT FOR A DETERMINATION BY THE BOARD WHETHER J. FAULKNER IS AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

2. AT THE HEARING IN THIS MATTER, WHEREIN THE PARTIES WERE AFFORDED AN OPPORTUNITY TO MAKE REPRESENTATIONS WITH RESPECT TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE RESPONDENT SUBMITTED A WRITTEN SUMMARY OF THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT IN THE FOLLOWING FORM:

1. FAULKNER SUPERVISES 3 STORESMEN AND 1 SECRETARY. SEE PAGE 5, PARAGRAPH 17.

THIS COMPLETE SUMMARY CONSISTED OF 30 ITEMS AND COVERED TWO PAGES.

3. COUNSEL FOR THE APPLICANT OBJECTED TO THE BOARD RECEIVING THIS SUMMARY ON THE GROUNDS THAT HE HAD NO OPPORTUNITY TO PROVIDE A SIMILAR WRITTEN "BRIEF". THE WRITTEN SUMMARY OF EVIDENCE SUBMITTED BY THE RESPONDENT SIMPLIFIED THE BOARD'S TASK OF DEALING WITH THE RESPONDENT'S ARGUMENT WITH RESPECT TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT. THE SUMMARY DID NOT ADD TO THE EXAMINER'S REPORT NOR DID IT CONTAIN COMMENTS CONCERNING SUCH EVIDENCE. THE SUMMARY MERELY HIGHLIGHTED THE EVIDENCE

4. THE BOARD DOES NOT REQUIRE PARTIES TO HIGHLIGHT THE EVIDENCE CONTAINED IN AN EXAMINER'S REPORT IN THE MANNER FOLLOWED BY THE RESPONDENT IN THIS CASE. THE BOARD LEAVES THE MANNER OF PRESENTATION TO THE CHOICE OF THE INDIVIDUAL PARTY. THERE CAN BE NO REASONABLE OBJECTION WHEN ONE OR BOTH OF THE PARTIES CHOOSES TO SUMMARIZE THE EVIDENCE IN THE MANNER FOLLOWED BY THE RESPONDENT IN THIS CASE AS LONG AS A COPY OF THE WRITTEN SUMMARY WHICH HAS BEEN PROVIDED TO THE BOARD IS ALSO PROVIDED TO THE OTHER PARTY, AS IN THE INSTANT CASE. IT IS TO BE NOTED THAT WHILE COUNSEL FOR THE APPLICANT REQUIRED AN HOUR AND A HALF TO COMPLETE HIS REPRESENTATIONS WITH RESPECT TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, COUNSEL FOR THE RESPONDENT TOOK APPROXIMATELY TEN MINUTES TO COMPLETE HIS ARGUMENT WITH THE ASSISTANCE OF THE SUMMARY OF EVIDENCE DESCRIBED ABOVE. IN ADDITION, COUNSEL FOR THE APPLICANT HAD THE WRITTEN SUMMARY OF EVIDENCE AVAILABLE TO FACILITATE HIS REPLY TO THE RESPONDENT'S ARGUMENT. IN THESE CIRCUMSTANCES, THE BOARD CAN FIND NO REASON FOR REFUSING TO ALLOW COUNSEL TO PROVIDE THE WRITTEN SUMMARY WHICH HAS BEEN PREPARED BY THE RESPONDENT IN THIS CASE.

5. WHILE COUNSEL FOR THE APPLICANT REQUESTED LEAVE OF THE BOARD TO SUBMIT A SIMILAR WRITTEN SUMMARY, THE BOARD IS OF OPINION THAT NO FURTHER OPPORTUNITY SHOULD BE PROVIDED THE APPLICANT'S COUNSEL TO ADD TO HIS REPRESENTATIONS SINCE HE FREELY CHOSE THE MANNER IN WHICH HIS REPRESENTATIONS WERE MADE AND HAD FULL OPPORTUNITY TO PRESENT WHATEVER ARGUMENT HE WISHED TO MAKE.

6. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JUNE 19TH, 1968, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT J. FAULKNER EXERCISES ADDITIONAL DUTIES AND RESPONSIBILITIES THAN WERE EXERCISED BY THE FORMER INCUMBENT OF THE POSITION, MR. RICHARDSON, AS EVIDENCE BY THE EXAMINER'S REPORT WITH RESPECT TO RICHARDSON'S DUTIES AND RESPONSIBILITIES DATED MAY 14TH, 1964. THE ADDITIONAL FUNCTIONS EXERCISED BY FAULKNER ARE OF A SUBSTANTIAL NATURE AND HIS FUNCTIONS, WHEN VIEWED AS A WHOLE, AND IN THE LIGHT OF THE CRITERIA ENUNCIATED BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379, ARE PROPERLY DESCRIBED AS MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. WE THEREFORE FIND ON ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES THAT SINCE J. FAULKNER EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, HE ACCORDINGLY IS NOT AN EMPLOYEE OF THE RESPONDENT FOR THE PURPOSES OF THE ACT.

INDEXED ENDORSEMENT - SECTION 79(A)

14675-68-M: CANADIAN UNION OF GENERAL EMPLOYEES, LOCAL 500 (TRADE UNION)
V. TORONTO YOUNG MEN'S CHRISTIAN ASSOCIATION, CENTRAL BRANCH (EMPLOYER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES
AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: GEORGE MILLER FOR THE TRADE UNION AND
H. D. LANGDON FOR THE EMPLOYER.

DECISION OF THE BOARD: JULY 15, 1968.

1. THIS IS A REFERENCE TO THE BOARD BY THE MINISTER OF LABOUR
PURSUANT TO SECTION 79(A) OF THE LABOUR RELATIONS ACT OF THE QUESTION
WHETHER THE TRADE UNION IS ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN
TO THE EMPLOYER UNDER THE PROVISIONS OF SECTION 47A OF THE ACT.

2. THE FACTS ARE NOT IN DISPUTE IN THIS MATTER AND ARE BRIEFLY
AS FOLLOWS. THE TORONTO YOUNG MEN'S CHRISTIAN ASSOCIATION, CENTRAL
BRANCH (HEREINAFTER REFERRED TO AS THE Y.M.C.A.) AND THE TRADE UNION
ENTERED INTO A COLLECTIVE AGREEMENT DATED SEPTEMBER 7TH, 1967, COVER-
ING ALL EMPLOYEES OF THE Y.M.C.A. WITH CERTAIN EXCEPTIONS NOT HERE
RELEVANT. THE TRADE UNION HAD ALSO ENTERED INTO A COLLECTIVE AGREE-
MENT WITH VERSAFOOD SERVICES LIMITED ON THE 14TH DAY OF AUGUST 1967
COVERING ALL EMPLOYEES OF VERSAFOOD SERVICES LIMITED EMPLOYED IN ITS
DINING AND CAFETERIAL DIVISION AT THE Y.M.C.A. WITH CERTAIN EXCEPT-
IONS. VERSAFOOD SERVICES LIMITED HAD AN AGREEMENT WITH THE Y.M.C.A.
FOR CATERING SERVICES WHICH IT SUPPLIED UNTIL NOVEMBER 30TH, 1967
WHEN THAT AGREEMENT WAS TERMINATED. AT THAT TIME THE CAFETERIA OPER-
ATION WAS ASSUMED BY THE Y.M.C.A. THE Y.M.C.A. AT ALL TIMES OWNED
ALL OF THE EQUIPMENT USED IN THE CAFETERIA AND HAD ITSELF OPERATED
THE CAFETERIA PRIOR TO THE TIME THAT IT HAD ENTERED INTO THE CONTRACT
WITH VERSAFOOD SERVICES LIMITED FOR CATERING SERVICES. AFTER THE
TERMINATION OF THE AGREEMENT THE Y.M.C.A. AGREED TO EMPLOY THOSE
PERSONS EMPLOYED BY VERSAFOOD SERVICES LIMITED IN THE CAFETERIA OPER-
ATION. THEY WERE CLASSIFIED AS NEW EMPLOYEES OF Y.M.C.A. NO CONSIDER-
ATION WAS PAID BY THE Y.M.C.A. TO VERSAFOOD SERVICES LIMITED AT THE
TERMINATION OF THEIR AGREEMENT.

3. BARGAINING TOOK PLACE BETWEEN THE EMPLOYER AND THE TRADE
UNION WITH RESPECT TO THE CAFETERIA EMPLOYEES AND IT IS THE POSITION
OF THE EMPLOYER THAT THE EMPLOYEES CONCERNED WERE COVERED UNDER THE
PROVISIONS OF THE COLLECTIVE AGREEMENT WITH THE TRADE UNION DATED
SEPTEMBER 7TH, 1967 AND THE PARTIES WERE ATTEMPTING TO NEGOTIATE AN
AMENDMENT TO THAT AGREEMENT. THE APPLICANT SUBMITS THAT THERE WAS
A SALE OF A BUSINESS WITHIN THE MEANING OF SECTION 47A OF THE ACT
WHEN THE CAFETERIA OPERATION WAS TAKEN OVER BY THE Y.M.C.A. FROM
VERSAFOOD SERVICES LIMITED AND THEREFORE THE TRADE UNIONS' BARGAIN-
ING RIGHTS CONTINUE SO THAT IT IS ENTITLED TO GIVE NOTICE TO BARGAIN
TO THE Y.M.C.A. IN THIS REGARD. THE APPLICANT, IN ORDER TO BE
SUCCESSFUL IN THIS APPLICATION, MUST ESTABLISH THAT THE EMPLOYER,
VERSAFOOD SERVICES LIMITED, SOLD ITS BUSINESS (OR A PART THEREOF)

TO THE Y.M.C.A. WITHIN THE MEANING OF SECTION 47A. THE Y.M.C.A. ACCORDING TO THE EVIDENCE HAD OPERATED THE CAFETERIA PRIOR TO THE AGREEMENT FOR CAFETERIA SERVICES WITH VERSAFOOD SERVICES LIMITED. AT ALL TIMES THE EQUIPMENT IN THE CAFETERIA REMAINED THE PROPERTY OF THE Y.M.C.A. WHICH APPARENTLY WAS USED BY VERSAFOOD UNDER THE TERMS OF THE AGREEMENT. THE PHYSICAL PLANT THEREFORE REMAINED THE SAME AFTER AND BEFORE NOVEMBER 30TH, 1967, AS STATED BY THE TRADE UNION, ALL THAT CHANGED WAS MANAGEMENT. THE PERSONS EMPLOYED BY VERSAFOOD IN THIS OPERATION WERE, AFTER NOVEMBER 30TH, 1967 HIRED BY THE Y.M.C.A. AS NEW EMPLOYEES. THE OPERATION OF A CAFETERIA IS CERTAINLY A BUSINESS. VERSAFOOD SERVICES LIMITED IS, WE UNDERSTAND, IN THE BUSINESS OF SUPPLYING FOOD CATERING SERVICES TO A VARIETY OF ESTABLISHMENTS. THUS, THE OPERATION OF A CAFETERIA AT THE Y.M.C.A. WOULD FORM PART OF THE BUSINESS OF VERSAFOOD. HOWEVER FOR THE PURPOSES OF SECTION 47A IN ORDER TO GIVE WEIGHT TO THE APPLICATION THE BOARD MUST FIND THAT THERE WAS A SALE OF THIS BUSINESS.

5. WITHIN THESE CIRCUMSTANCES IT IS OUR VIEW THAT THERE WAS NO SALE WITHIN THE MEANING OF THE ACT AS THERE WAS NOTHING SOLD, LEASED, TRANSFERRED OR DISPOSED OF BY VERSAFOOD. THE CATERING SERVICES WERE CONTRACTED OUT BY THE OWNER AND AT THE EXPIRY DATE OF THE AGREEMENT FOR SUCH SERVICES THE CONTRACT WAS TERMINATED AND NOT RENEWED. THE Y.M.C.A. THEN CONTINUED THE OPERATION OF ITS CAFETERIA AS IT HAD DONE PRIOR TO THE CONTRACT WITH VERSAFOOD. THERE WAS NO CONSIDERATION PAID BY Y.M.C.A. TO VERSAFOOD AT THE TERMINATION OF THE AGREEMENT FOR ANY TANGIBLE OR INTANGIBLE ASSET. THE CONTRACT FOR SERVICES WAS SIMPLY ALLOWED TO EXPIRE ACCORDING TO ITS TERMS AND WAS NOT RENEWED. VERSAFOOD MAY WELL, FOR ITS OWN PURPOSES, VALUE THE PROBABILITY THAT SUCH AN AGREEMENT WOULD BE RENEWED BY THE OWNER THUS CONTINUING ITS BUSINESS IN THAT LOCATION BUT THIS FACTOR IS PART OF GOODWILL AND AN ASSET WOULD NOT BE TRANSFERRED IN THIS SITUATION TO THE OWNER.

6. WE, THEREFORE, CONCLUDE THAT ON THE BASIS OF ALL THE EVIDENCE BEFORE US AND THE REPRESENTATIONS OF THE PARTIES THAT WHAT TRANSPIRED BETWEEN VERSAFOOD SERVICES LIMITED AND THE Y.M.C.A. DID NOT CONSTITUTE A SALE OF A BUSINESS WITHIN THE MEANING OF THE ACT.

7. THE ANSWER TO THE QUESTION REFERRED TO THE BOARD BY THE MINISTER OF LABOUR IS: THE TRADE UNION IS NOT ENTITLED TO GIVE NOTICE OF DESIRE TO BARGAIN TO THE EMPLOYER PURSUANT TO THE PROVISIONS OF SECTION 47A OF THE LABOUR RELATIONS ACT.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

14013-67-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 1486 (APPLICANT) v. INDUSTRIAL-MINE INSTALLATIONS LIMITED
(RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBER
R. W. TEAGLE: JULY 5, 1968.

1. THE APPLICANT HAS REQUESTED THAT THE BOARD RECONSIDER ITS
DECISION DATED MAY 9, 1968.

2. THE DECISION IN QUESTION WAS MADE FOLLOWING A HEARING AT
WHICH EVIDENCE WAS ADDUCED AND REPRESENTATIONS MADE. SUBSEQUENT TO
THE HEARING AN EXAMINER WAS APPOINTED TO MAKE OTHER INQUIRIES.
THE EXAMINER'S REPORT WAS ISSUED ON MARCH 18TH, 1968. NO OBJECTIONS
WERE TAKEN TO THE REPORT AND NO REQUEST WAS SUBMITTED BY THE PARTIES
TO MAKE FURTHER REPRESENTATIONS TO THE BOARD.

3. IN ITS DECISION OF MAY 9, 1968 THE BOARD REVOKED ITS EARLIER
DECISION DATED JANUARY 11, 1968 CERTIFYING THE APPLICANT AS BARGAIN-
ING AGENT FOR A GROUP OF EMPLOYEES OF THE RESPONDENT AND DIRECTED
THAT A REPRESENTATION VOTE BE TAKEN. THE PARTIES WERE UNABLE TO
SETTLE THE ARRANGEMENTS FOR THE TAKING OF THE VOTE IN QUESTION AND,
AFTER CONSIDERING THEIR REPRESENTATIONS AS SET OUT IN THEIR LETTERS
TO THE BOARD, AN EXAMINER WAS AGAIN APPOINTED TO INQUIRE INTO THE
QUESTION OF THE VOTERS' LIST. THE EXAMINER SUBSEQUENTLY REPORTED TO
THE BOARD THAT AN AGREEMENT HAD BEEN REACHED AND IN ITS DECISION
DATED JUNE 24, 1968 THE BOARD DIRECTED THE PARTIES TO MEET FORTHWITH
IN ORDER TO SETTLE THE REMAINING ARRANGEMENTS FOR THE TAKING OF THE
REPRESENTATION VOTE.

4. IT WAS ONLY AT THIS STAGE, ALMOST TWO MONTHS AFTER THE
ORIGINAL ORDER DIRECTING THE VOTE, THAT THE APPLICANT REQUESTED THE
BOARD TO RECONSIDER ITS DECISION OF MAY 9, 1968 DIRECTING THAT VOTE.
ON THE GROUND OF DELAY ALONE WE ARE NOT INCLINED TO ENTERTAIN THE
SAID REQUEST. IN ADDITION, HOWEVER, THE APPLICANT HAS NOT RAISED ANY
ISSUES THAT WERE NOT PREVIOUSLY BEFORE THE BOARD IN THIS MATTER AND
ON WHICH IT HAD FULL OPPORTUNITY TO MAKE REPRESENTATIONS, NOR DOES
THE APPLICANT ALLEGE THAT THERE IS ANY NEW EVIDENCE AVAILABLE TO
IN THESE CIRCUMSTANCES, A FURTHER HEARING WOULD SERVE NO USEFUL PUR-
POSE.

5. HAVING REGARD TO THE ABOVE CONSIDERATIONS, THE BOARD DOES
NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION
DATED MAY 9, 1968 IN THIS MATTER.

THE APPLICANT'S REQUEST IS ACCORDINGLY DENIED.

DECISION OF BOARD MEMBER E. BOYER: JULY 5, 1968.

WITHOUT DEROGATING FROM MY DISSENT TO THE BOARD'S DECISION
DATED MAY 9, 1968, I CONCUR WITH MY COLLEAGUES THAT THE APPLICANT
HAS FAILED TO MAKE OUT ANY GROUNDS FOR THE MAJORITY TO RECONSIDER
THAT DECISION.

14086-67-R: COMMUNICATIONS WORKERS OF AMERICA, AFL, CIO & CLC
(APPLICANT) V. NORTHERN ELECTRIC COMPANY LIMITED (RESPONDENT) V.
NORTHERN ELECTRIC EMPLOYEES ASSOCIATION (INTERVENER #1) V.
UNITED STEELWORKERS OF AMERICA (INTERVENER #2).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER
AND R. W. TEAGLE.

DECISION OF THE BOARD: JULY 31, 1968.

1. THE RESPONDENT, BY LETTER DATED JULY 30TH, 1968, HAS REQUESTED
THE BOARD TO CLARIFY ITS DECISION IN THIS MATTER DATED JULY 24TH, 1968,
AND HAS SET OUT THE FOLLOWING GROUNDS:

1. THE APPLICATION FOR CERTIFICATION AND THE
REPLY TO APPLICATION FOR CERTIFICATION INVOLVE
TWO DISTINCT ISSUES.
 - (A) THE JURISDICTION OF THE ONTARIO LABOUR
RELATIONS BOARD TO DEAL WITH THE
APPLICATION, AND
 - (B) THE APPROPRIATENESS OF THE BARGAINING UNIT.
2. THE ISSUE AS TO THE JURISDICTION OF THE BOARD
WAS RAISED BY THE RESPONDENT AND THEREFORE
THE ONUS OF PROOF ON THIS ISSUE LIES WITH THE
RESPONDENT.
3. THE SECOND ISSUE AS TO THE APPROPRIATENESS
OF THE BARGAINING UNIT IS RAISED BY THE
APPLICANT AND THEREFORE THE ONUS OF PROOF
LIES WITH THE APPLICANT.
4. IT IS SUBMITTED THAT THE RESPONSIBILITY FOR
CALLING EVIDENCE RUNS WITH THE ONUS OF PROOF
AND THE RIGHT, THEREFORE, TO CALL REPLY OR
REBUTTAL EVIDENCE ALSO FLOWS FROM THE PRIMARY
ONUS OF PROOF ON ANY ISSUE.
5. IT FOLLOWS THEREFORE THAT THE BOARD'S DECISION
DATED JULY 24, 1968 CLEARLY WOULD APPLY TO THE
ISSUE ON THE APPROPRIATENESS OF THE BARGAINING
UNIT, HOWEVER, THE APPLICATION OF THE BOARD'S
DECISION ON THE ISSUE OF JURISDICTION IS NOT
CLEAR.

6. IN OUR SUBMISSION THE BOARD SHOULD CLARIFY ITS DECISION SO AS TO DIRECT THE EXAMINER TO PERMIT THE RESPONDENT TO CALL REPLY OR REBUTTAL EVIDENCE AS TO THE JURISDICTION ISSUE ONLY. THIS WOULD NOT PREJUDICE THE RIGHTS OF THE APPLICANT IN VIEW OF THE FACT THAT IT HAS NOT CALLED ANY EVIDENCE IN CHIEF ON EITHER OF THE ISSUES.
2. THE RESPONDENT IS CORRECT IN STATING THAT, IN ADDITION TO THE ISSUE WHICH INVOLVES THE COMPOSITION AND APPROPRIATENESS OF THE BARGAINING UNIT, THERE IS ALSO THE ISSUE CONCERNING THE JURISDICTION OF THE BOARD TO DEAL WITH THIS APPLICATION. THE RESPONDENT, HOWEVER, WAS NOT THE ONLY PARTY TO RAISE THE CONSTITUTIONAL ISSUE. INTERVENER #1 ALSO CHALLENGED THE BOARD'S JURISDICTION IN ITS INTERVENTION (FORM 11).
3. THE ISSUE WITH RESPECT TO THE BOARD'S JURISDICTION TO DEAL WITH A BARGAINING UNIT COMPRISED OF CERTAIN EMPLOYEES OF THE RESPONDENT AT BRAMALEA WAS DECIDED BY THE COURT IN RE NORTHERN ELECTRIC COMPANY LIMITED AND UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA, ET AL., (1963) 39 D.L.R. 346; [1963] 2 O.R. 301; 63 C.L.L. C. ¶15,484. IN THAT CASE THE COURT FOUND THAT THE BOARD HAD JURISDICTION TO DEAL WITH AN APPLICATION INVOLVING EMPLOYEES OF THE RESPONDENT ENGAGED IN THE PROCESS OF MANUFACTURING. THE JURISDICTIONAL ISSUE IN THE INSTANT CASE IS THEREFORE CONFINED TO THE BARGAINING UNIT OF INSTALLERS RATHER THAN TO EMPLOYEES OF THE RESPONDENT GENERALLY.
4. SINCE THE JURISDICTIONAL ISSUE IS SO INTERWOVEN WITH THE ISSUE OF THE COMPOSITION AND APPROPRIATENESS OF THE BARGAINING UNIT SOUGHT BY THE APPLICANT, IT WOULD BE VIRTUALLY IMPOSSIBLE TO SEPARATE THE EVIDENCE CONCERNING THE TWO ISSUES. IN THESE CIRCUMSTANCES, THE BOARD IS OF OPINION THAT NO USEFUL PURPOSE WOULD BE SERVED BY ADDING TO OR MODIFYING THE PROCEDURE WITH RESPECT TO THE CALLING OF EVIDENCE ENUNCIATED BY THE BOARD IN ITS DECISION OF JULY 24TH, 1968, IN THIS MATTER.
5. THE BOARD THEREFORE DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF JULY 24TH, 1968, AND THE RESPONDENT'S REQUEST IS THEREFORE DENIED.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - PROSECUTION

14703-68-U: JAMES SPEIRS FRANK MAULE (APPLICANTS) V. A.M. WOOLFREY, OSHAWA, GENERAL MOTORS LIMITED, T. H. GLEN, TORONTO BRITISH AMERICAN OIL CO. LIMITED, K. G. COOKE, HAMILTON, WESTINGHOUSE, L. G. KERR, DRYDEN, DRYDEN PAPER CO. LIMITED, N.H. WAGE, COPPER CLIFF, INTERNATIONAL NICKEL CO. LTD., J. LAWLER, HAMILTON, STEEL CO. OF CANADA: J.L. MCINTYRE, SAULT STE. MARIE, ALGOMA STEEL CO. (RESPONDENTS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JULY 15, 1968.

1. THE APPLICANTS HAVE REQUESTED THE BOARD TO REVIEW ITS DECISION IN THIS MATTER DATED JUNE 19, 1968 IN WHICH THE BOARD FOUND THAT THE APPLICANTS HAD FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO THE PROVISIONS OF SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, DISMISSED THE APPLICATION FOR LEAVE TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENTS. THE MAIN REASON FOR DISMISSAL WAS THAT MORE THAN SIX MONTHS HAD ELAPSED AFTER THE TIME WHEN THE SUBJECT MATTER OF THE PROCEEDINGS AROSE AND, CONSEQUENTLY, NO PROSECUTION COULD BE LAUNCHED. THE RELEVANT STATUTORY AUTHORITIES WERE SET OUT IN DETAIL IN THE BOARD'S DECISION. THERE IS NOTHING CONTAINED IN THE REQUEST FOR REVIEW WHICH WOULD IN ANY WAY CAUSE THE BOARD TO CHANGE ITS ORIGINAL DECISION. THE LAW IS QUITE CLEAR IN THIS MATTER.

2. ACCORDINGLY, THE REQUEST FOR LEAVE IS DENIED AND THE BOARD'S ORIGINAL DECISION DATED JUNE 19, 1968 IS HEREBY CONFIRMED.

DECISION OF THE BOARD: JULY 30, 1968.

1. ON JUNE 19, 1968 THE BOARD DISMISSED THE APPLICATION BY THE APPLICANTS FOR LEAVE TO PROSECUTE THE NAMED RESPONDENT. THE APPLICANTS REQUESTED THE BOARD TO REVIEW ITS DECISION AND ON JULY 15, 1968 THE BOARD CONFIRMED ITS ORIGINAL DECISION. THIS LAST DECISION STATED THAT THE MAIN REASON FOR DISMISSAL WAS THAT MORE THAN SIX MONTHS HAD ELAPSED AFTER THE TIME WHEN THE SUBJECT MATTER OF THE PROCEEDING AROSE AND, CONSEQUENTLY, NO PROSECUTION COULD BE LAUNCHED.

2. THE APPLICANTS HAVE WRITTEN THE BOARD ALLEGING THAT THE SUBJECT MATTER OF THE COMPLAINT EXTENDED TO JUNE 1, 1967 AND NOT MARCH 29, 1967, AS SET OUT IN THEIR ORIGINAL APPLICATION. EVEN IF WE WERE TO PERMIT THE APPLICANTS TO AMEND THEIR ORIGINAL APPLICATION, AT THIS STAGE OF THE PROCEEDINGS THIS WOULD NOT ASSIST THEM IN ANY WAY. WHAT THE APPLICANTS FAIL TO REALIZE IS THAT THE ACTUAL PROSECUTION IN THE MAGISTRATE'S COURT MUST BE COMMENCED WITHIN THE SIX-MONTH PERIOD. THE GRANTING OF A CONSENT TO INSTITUTE A PROSECUTION BY THE BOARD DOES NOT MEAN THAT A PROSECUTION HAS BEEN INSTITUTED. THE CONSENT MERELY PERMITS THE APPLICANT TO FILE THE NECESSARY PAPERS IN THE MAGISTRATE'S COURT. IT IS THE FILING OF THESE PAPERS WHICH MUST BE DONE WITHIN SIX MONTHS AFTER THE TIME WHEN THE SUBJECT MATTER OF THE PROCEEDINGS AROSE.

3. THE REQUEST FOR REVIEW IS DENIED.

14704-68-U: JAMES SPEIRS FRANK MAULE (APPLICANTS) V. F. W. MURRAY
(RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER
AND R. W. TEAGLE.

DECISION OF THE BOARD: JULY 15, 1968.

1. THE APPLICANTS HAVE REQUESTED THE BOARD TO RECONSIDER ITS
DECISION IN THIS MATTER DATED JUNE 19, 1968 IN WHICH, PURSUANT TO
THE PROVISIONS OF SECTION 47(1) OF THE BOARD'S RULES OF PROCEDURE,
IT DISMISSED AN APPLICATION FOR LEAVE TO INSTITUTE A PROSECUTION
AGAINST THE RESPONDENT. IN THEIR REQUEST FOR REVIEW THE APPLI-
CANTS STATE:

WE MAKE YET ANOTHER APPEAL TO THE LABOUR RELATIONS
BOARD TO GIVE US THEIR CONSENT IN WRITING TO
ALLOW US THE RIGHT TO SUBMIT THIS CASE TO THE
HIGH COURT OF JUSTICE IN ONTARIO.

NO CONSENT OF THE BOARD IS REQUIRED TO QUESTION ONE OF ITS DECISIONS
IN THE HIGH COURT OF JUSTICE. SUCH A PROCEEDING CAN ONLY BE INSTI-
TUTED IN ACCORDANCE WITH THE RULES OF THE SUPREME COURT OF ONTARIO
AND THE GENERAL LAW OF THE LAND RELATING TO SUCH MATTERS. IT IS
OBSVIOUS THAT THE APPLICANTS IN THE PRESENT CASE HAVE MISCONSTRUED
THEIR REMEDY, AND OUR DECISION DATED JUNE 19TH, 1968 DISMISSING
THIS APPLICATION IS HEREBY CONFIRMED.

INDEXED ENDORSEMENTS - APPLICATIONS FOR REQUEST FOR CLARIFICATION OF

BOARD'S DECISION

14313-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE
QUEEN ELIZABETH HOSPITAL, TORONTO (RESPONDENT) V. INTERNATIONAL UNION
OF OPERATING ENGINEERS LOCAL 796 (INTERVENER) V. GROUP OF EMPLOYEES
(OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

DECISION OF THE BOARD: JULY 31, 1968.

1. BY A DECISION IN THIS MATTER DATED APRIL 24TH, 1968, THE
BOARD FOUND A UNIT OF EMPLOYEES DESCRIBED IN PARAGRAPH 2 OF THAT
DECISION TO BE APPROPRIATE FOR COLLECTIVE BARGAINING. IN THE SAME
DECISION THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE
AMONG THE EMPLOYEES IN THE UNIT.

2. BY A DECISION DATED APRIL 30TH, 1968, BECAUSE OF A DISAGREEMENT BETWEEN THE RESPONDENT AND INTERVENER AS TO THE COMPOSITION OF THE BARGAINING UNIT IN AN APPLICATION FOR CERTIFICATION OF THE INTERVENER (BOARD FILE No. 14067-67-R), THE BOARD DIRECTED THAT THOSE PERSONS IN DISPUTE, NAMELY C. ADAMS, K. BOONE, L. COMETE, WM. VANDUST, C. DIAS AND TIBOR SCHMELLAR, BE PERMITTED TO CAST BALLOTS IN THE REPRESENTATION VOTE SCHEDULED IN THE INSTANT APPLICATION. THE BOARD FURTHER DIRECTED THAT THEIR BALLOTS BE SEGREGATED AND NOT COUNTED PENDING A FURTHER RULING OF THE BOARD.

3. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE ON MAY 24TH, 1968, REPRESENTATIVES OF THE PARTIES SIGNED A FORM CONSENTING TO AN IMMEDIATE COUNTING OF THE BALLOTS AND WAIVED ANY OBJECTIONS AS TO THE REGULARITY AND SUFFICIENCY OF THE BALLOTING.

4. BY A DECISION OF THE BOARD DATED JUNE 6TH, 1968, THE BOARD FOUND THAT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT AND CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR THE UNIT OF EMPLOYEES DESCRIBED IN PARAGRAPH 2 OF ITS DECISION OF APRIL 24TH, 1968.

5. BY A DECISION DATED JULY 24TH, 1968 (BOARD FILE No. 14067-67-R) THE BOARD CERTIFIED THE INTERVENER AS BARGAINING AGENT FOR ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT THE ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER. IN THAT DECISION THE BOARD FOUND THAT C. ADAMS, K. BOONE, L. COMETE, WM. VANDERSTELT AND C. DIAS WERE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED IN THE ABOVE UNIT AND THAT TIBOT SCHMELLAR WAS NOT AN EMPLOYEE OF THE RESPONDENT.

6. HAVING REGARD TO THE FINDINGS OF THE BOARD WITH RESPECT TO THE NAMED EMPLOYEES IN THE APPLICATION FOR CERTIFICATION OF THE INTERVENER, THE BOARD DECLARES FOR PURPOSES OF CLARITY IN THE INSTANT APPLICATION THAT C. ADAMS, K. BOONE, L. COMETE, WM. VANDERSTELT AND C. DIAS ARE INCLUDED IN THE UNIT DESCRIBED IN THE BOARD'S CERTIFICATE OF JUNE 6TH, 1968.

14447-68-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. COCA-COLA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: JULY 11, 1968.

1. THE SOLICITORS FOR A GROUP OF OBJECTORS HAVE WRITTEN TO THE BOARD BY LETTER DATED JULY 8TH, 1968, REQUESTING CLARIFICATION OF THE BOARD'S DECISION IN THIS MATTER DATED JUNE 26TH, 1968. THE LETTER READS, IN PART, AS FOLLOWS:

WE HAVE PERUSED THE REASONS FOR THE BOARD'S DECISION MOST CAREFULLY, AND HAVE UNFORTUNATELY ENCOUNTERED SOME DIFFICULTY IN UNDERSTANDING THE PRECISE FINDING OF FACT MADE BY THE BOARD IN PARAGRAPH 15 OF THOSE REASONS WHICH READS AS FOLLOWS:

' EVEN IF WE WERE TO IGNORE THE WISHES OF THE COMBINED MAJORITY AS EXPRESSED IN THE REPRESENTATION VOTE IN THIS CASE, THE FACT REMAINS THAT THE MAJORITY OF EMPLOYEES AT BOTH PLANTS AUTHORIZED THE APPLICANT TO MAKE THIS APPLICATION AND THIS AUTHORITY MUST NECESSARILY EXTEND TO AUTHORIZE A UNION TO PROPOSE AN APPROPRIATE BARGAINING UNIT.'

IT IS PERHAPS NOT ENTIRELY CLEAR WHETHER THE BOARD FOUND THE MAJORITY OF EMPLOYEES AT EACH OF THE TWO PLANTS SUPPORTED THE APPLICANT OR WHETHER THE BOARD IS REFERRING TO THE FACT THAT THE MAJORITY OF THE COMBINED EMPLOYEES AT BOTH OF THE PLANTS TAKEN TOGETHER AS ONE UNIT SUPPORTED THE APPLICANT.

2. IN THE BOARD'S FINDING REFERRED TO ABOVE, THE BOARD FOUND THAT THE OVERALL MAJORITY OF EMPLOYEES IN THE UNIT COMPRISED OF EMPLOYEES AT BOTH PLANTS IN METROPOLITAN TORONTO JOINED THE APPLICANT UNION. IT WAS NOT THE BOARD'S INTENTION TO INDICATE THAT THE MAJORITY OF EMPLOYEES AT EACH OF THE TWO PLANTS WERE MEMBERS OF THE APPLICANT.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

14687-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. TURESKI CONSTRUCTION CO. LTD. (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA GREATER NIAGARA ONTARIO CARPENTERS DISTRICT COUNCIL (INTERVENER).

3. AT THE HEARING IN THIS MATTER IT WAS ESTABLISHED THAT AS OF JUNE 4TH, 1968, THE DATE OF THE MAKING OF THE INSTANT APPLICATION, THE RESPONDENT HAD IN ITS EMPLOY BOTH CARPENTERS AND CONSTRUCTION LABOURERS. IT WAS ESTABLISHED ALSO THAT THE INTERVENER HOLDS THE BARGAINING RIGHTS FOR THE CARPENTERS IN THE EMPLOY OF THE RESPONDENT IN THE GEOGRAPHIC AREA APPLIED FOR BY THE APPLICANT. THE EVIDENCE IS THAT IN THE CURRENT NEGOTIATION BETWEEN THE NIAGARA CONSTRUCTION ASSOCIATION AND THE INTERVENER, THE ASSOCIATION IS BARGAINING ON BEHALF OF THE RESPONDENT, WHICH IS ONE OF ITS MEMBERS.

4. HAVING REGARD TO THE FACT THAT THE ONLY EMPLOYEES OF THE RESPONDENT AS OF THE DATE OF THE MAKING OF THE APPLICATION FOR WHOM NO TRADE UNION ALREADY HOLDS THE BARGAINING RIGHTS ARE THE CONSTRUCTION LABOURERS, THE BOARD FINDS THAT THE UNIT PROPOSED BY THE APPLICANT IN THESE CIRCUMSTANCES IS APPROPRIATE FOR COLLECTIVE BARGAINING (SEE WINTER & SON CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 889).

(JULY 2, 1968).

14707-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. BEDARD GIRARD LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

5. A HEARING WAS HELD IN THIS MATTER "TO CONSIDER THE REMAINING OUTSTANDING ISSUES INCLUDING THE STATEMENT OF OBJECTIONS TO THE APPLICATION SIGNED BY EMPLOYEES IN THE PROPOSED BARGAINING UNIT". THE PARTIES WERE NOTIFIED OF THE PURPOSE OF THE HEARING. AS NOTED ABOVE, NO ONE APPEARED ON BEHALF OF THE RESPONDENT OR THE OBJECTORS. IN THESE CIRCUMSTANCES THE BOARD DOES NOT DEEM IT NECESSARY TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. ACCORDINGLY, CERTIFICATE WILL ISSUE TO THE APPLICANT.

(JULY 16, 1968).

14812-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENT).

6. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF

RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. AFTER CONSIDERING THE REPORT OF THE EXAMINER DATED JULY 19TH, 1968, TOGETHER WITH THE REPRESENTATIONS OF THE PARTIES THEREON, THE BOARD FINDS THAT ROBERT S. CLARK, EMPLOYED AS A FORK LIFT OPERATOR, IS AN EMPLOYEE FALLING WITHIN THE ABOVE DEFINED BARGAINING UNIT. THE BOARD FURTHER FINDS THAT ON THE DATE OF THE MAKING OF THE APPLICATION THERE WERE TWO EMPLOYEES IN THE BARGAINING UNIT.

(JULY 31, 1968).

14830-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CANADIAN GENERAL ELECTRIC COMPANY LIMITED (RESPONDENT).

2. HAVING REGARD TO THE NATURE OF THE WORK BEING PERFORMED BY THE RESPONDENT AT THE LAMBTON GENERATING STATION, WITH RESPECT TO THIS ASPECT OF THE RESPONDENT'S OPERATIONS, WE FIND THAT IT IS OPERATING A BUSINESS IN THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 1(1)(DA) OF THE ACT.

(JULY 26, 1968).

ERRATA

THE FOLLOWING CASE 14094-67-U, RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC (COMPLAINANT) V. PARK HOUSE (RESPONDENT) LISTED AT PAGE 24 OF THE APRIL 1968 REPORT, SHOULD NOT HAVE BEEN ENTERED IN THAT MONTH AS BEING DISMISSED. THE CASE WAS GRANTED IN MARCH 1968 AND WAS RECORDED IN THE REPORT FOR THAT MONTH.

ERRATA (CONT'D)

REVISED STATISTICS

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES		
JUNE	1ST 3 MTHS	FISCAL YR.	JUNE	1ST 3 MTHS	FISCAL YR.
<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>	<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>
56	172	191	2005	7069	5789
20	68	55	877	1746	3570
<u>6</u>	<u>28</u>	<u>17</u>	<u>61*</u>	<u>542</u>	<u>350</u>
<u>82</u>	<u>268</u>	<u>263</u>	<u>2943</u>	<u>9357</u>	<u>9709</u>

I. CERTIFICATION

*CHANGED FROM 316 WHICH WAS REPORTED IN THE JUNE REPORT AT PAGE 329. ALSO THE TOTAL NUMBER OF EMPLOYEES FOR JUNE CHANGES TO 2943 FROM 3198, AND THE TOTAL OF THE FIRST THREE MONTHS OF 1968-69 CHANGES 9357 FROM 9612.

STATISTICAL TABLES FOR JULY 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		JULY 1968	1ST 4 MONTHS OF 1968-69	FISCAL YEAR 1967-68
I.	CERTIFICATION	88	359	335
II.	DECLARATION TERMINATING BARGAINING RIGHTS	1	10	30
III.	DECLARATION OF SUCCESSOR STATUS	1	9	4
IV.	DECLARATION THAT STRIKE UNLAWFUL	4	18	23
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	3	11
VI.	CONSENT TO PROSECUTE	19	40	59
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	8	71	48
VIII.	MISCELLANEOUS	<u>2</u>	<u>24</u>	<u>18</u>
TOTAL		<u>123</u>	<u>534</u>	<u>528</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		JULY 1968	1ST 4 MONTHS OF 1968-69	FISCAL YEAR 1967-68
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		103	393	344

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		JULY 1968	1ST 4 MONTHS OF FISCAL YEAR 1968-69	1967-68
I.	CERTIFICATION	94	362	340
II.	DECLARATION TERMINATING BARGAINING RIGHTS	4	16	26
III.	DECLARATION OF SUCCESSOR STATUS	3	11	4
IV.	DECLARATION THAT STRIKE UNLAWFUL	2	16	17
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	3	11
VI.	CONSENT TO PROSECUTE	17	42	35
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	12	70	59
VIII.	MISCELLANEOUS	<u>9</u>	<u>27</u>	<u>29</u>
TOTAL		<u>141</u>	<u>547</u>	<u>521</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>JULY</u> <u>1968</u>	<u>1ST 4 MTHS</u> <u>1968-69</u>	<u>FISCAL YR.</u> <u>1967-68</u>	<u>JULY</u> <u>1968</u>	<u>1ST 4 MTHS</u> <u>1968-69</u>	<u>FISCAL</u> <u>1967-</u>
1. <u>CERTIFICATION</u>						
GRANTED	73	245	253	2159	9228	7294
DISMISSED	15	83	65	554	2300	3679
WITHDRAWN	<u>6</u>	<u>34</u>	<u>22</u>	<u>74</u>	<u>616</u>	<u>410</u>
TOTAL	<u>94</u>	<u>362</u>	<u>340</u>	<u>2787</u>	<u>12144</u>	<u>11383</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	3	9	13	121	280	178
DISMISSED	-	5	13	-	41	640
WITHDRAWN	<u>1</u>	<u>2</u>	<u>-</u>	<u>12</u>	<u>31</u>	<u>-</u>
TOTAL	<u>4</u>	<u>16</u>	<u>26</u>	<u>133</u>	<u>352</u>	<u>818</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
	<u>JULY</u>	<u>1ST 4 MTHS OF FISCAL YR.</u>		
	<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>	
<u>III. DECLARATION THAT STRIKE</u>				
<u>UNLAWFUL</u>				
GRANTED		1	1	
DISMISSED	-	2	2	
WITHDRAWN	<u>2</u>	<u>13</u>	<u>14</u>	
TOTAL	<u>2</u>	<u>16</u>	<u>17</u>	
<u>IV. DECLARATION THAT LOCKOUT</u>				
<u>UNLAWFUL</u>				
GRANTED	-	-	-	
DISMISSED	-	1	1	
WITHDRAWN	<u>-</u>	<u>2</u>	<u>10</u>	
TOTAL	<u>-</u>	<u>3</u>	<u>11</u>	
<u>V. CONSENT TO PROSECUTE</u>				
GRANTED	2	7	3	
DISMISSED	2	9	4	
WITHDRAWN	<u>13</u>	<u>26</u>	<u>28</u>	
TOTAL	<u>17</u>	<u>42</u>	<u>35</u>	
<u>VI. COMPLAINT OF UNFAIR</u>				
<u>PRACTICE IN EMPLOYMENT</u>				
<u>(SECTION 65)</u>				
GRANTED	1	2	6	
DISMISSED	3	20	1	
WITHDRAWN	<u>8</u>	<u>48</u>	<u>8</u>	
TOTAL	<u>12</u>	<u>70</u>	<u>15</u>	

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JULY 1968	1ST 4 MTHS OF FISCAL YR. 1968-69	1967-68
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	7	4
POST-HEARING VOTE	5	15	19
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	2	5
POST-HEARING VOTE	3	11	9
BALLOTS NOT COUNTED	-	-	-
TOTAL	<u>8</u>	<u>35</u>	<u>37</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	JULY 1968	1ST 4 MTHS OF FISCAL YR. 1968-69	1967-68
*RESPONDENT UNION SUCCESSFUL	-	-	1
RESPONDENT UNION UNSUCCESSFUL	<u>2</u>	<u>6</u>	<u>7</u>
TOTAL	<u>2</u>	<u>6</u>	<u>8</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING AUGUST 1968

BARGAINING AGENTS CERTIFIED DURING AUGUST

NO VOTE CONDUCTED

14096-68-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. THE WATSON MANUFACTURING COMPANY OF PARIS LIMITED (RESPONDENT) V. CANADIAN TEXTILE COUNCIL (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STATIONARY ENGINEERS COVERED BY THE BOARD'S CERTIFICATE IN FAVOUR OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS DATED NOVEMBER 9, 1965." (265 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 441).

14152-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF LONDON (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, TECHNICAL EMPLOYEES, SECRETARY TO THE TRUSTEES, SECRETARIES - EXECUTIVE SECRETARY'S OFFICE, ADMINISTRATIVE SECRETARY, PRIVATE SECRETARY TO THE EXECUTIVE SECRETARY, SECRETARY TO THE SUPERINTENDENT OF BUSINESS, SECRETARY TO THE MANAGER - ADMINISTRATIVE SERVICES, ASSISTANT TO THE ADMINISTRATIVE SECRETARY - DIRECTOR'S OFFICE, SYSTEMS ANALYSTS, AND PERSONS REGULARLY EMPLOYED FOR 24 HOURS OR LESS PER WEEK." (127 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 447).

14602-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. NIAGARA DISTRICT BOARD OF EDUCATION (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT IN NIAGARA TOWN AND TOWNSHIP ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (23 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA TOWN AND TOWNSHIP REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 454).

14606-68-R: OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION (APPLICANT) V. THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101 (RESPONDENT).

UNIT: "ALL ~~CLERKS~~ AND BUSINESS REPRESENTATIVES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14688-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. NORTH BAY COLLEGIATE INSTITUTE BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT HEAD CARETAKERS, PERSONS ABOVE THE RANK OF HEAD CARETAKER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (45 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT DIETITIANS ARE NOT INCLUDED IN THE BARGAINING UNIT.

14698-68-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) V. THE PYRAMID CANNERS LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LEAMINGTON, SAVE AND EXCEPT FOREMEN, FLOORLADIES, QUALITY CONTROL SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN, FLOORLADY, QUALITY CONTROL SUPERVISOR, OFFICE AND SALES STAFF, SEASONAL EMPLOYEES, FIELDMEN, NURSES AND STATIONARY ENGINEERS AND PERSONS ENGAGED PRIMARILY AS THEIR HELPERS COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT." (27 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT LABORATORY AND QUALITY CONTROL STAFF ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 455).

14718-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SECRETARY-TREASURER AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER."
(6 EMPLOYEES IN THE UNIT).

14740-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. W. N. CONSTRUCTION (OTTAWA) LTD. (RESPONDENT) V. CANADIAN CONSTRUCTION WORKERS' UNION, DIV. NO. 1, N.C.C.L. (INTERVENER).

- AND -

14750-68-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIV. NO. 1, N.C.C.L. (APPLICANT) V. W.N. CONSTRUCTION (OTTAWA) LTD. (RESPONDENT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (INTERVENER) V. LOCAL NO. 7. ONTARIO BRICKLAYERS, MASONS AND PLASTERERS I.U. OF AMERICA (INTERVENER) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER).

(CANADIAN CONSTRUCTION WORKERS' UNION, DIV. NO. 1, N.C.C.L. DISMISSED).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (17 EMPLOYEES IN THE UNIT).

(LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 CERTIFIED).

(SEE INDEXED ENDORSEMENT PAGE 458).

14838-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CATKEY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14854-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. KENT COUNTY PUBLIC SCHOOL AREA NO. 1 (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

14855-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WALLACEBURG DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

14860-68-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) V. BOESE FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, FLOOR LADIES AND QUALITY CONTROL SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN, FLOOR LADY AND QUALITY CONTROL SUPERVISOR, OFFICE AND SALES STAFF, SEASONAL EMPLOYEES, FIELDMEN AND NURSES." (30 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE LABORATORY AND QUALITY CONTROL STAFF ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

14863-68-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. ST. MARYS DISTRICT COLLEGIATE INSTITUTE BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

14865-68-R: LAIDLAW TRANSPORT EMPLOYEES ASSOCIATION (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF THE TOWNSHIP OF PUSLINCH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, DISPATCHERS, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (55 EMPLOYEES IN THE UNIT).

14867-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. TILLSONBURG DISTRICT MEMORIAL HOSPITAL TRUST (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED IN THE BOILER HOUSE OF THE RESPONDENT AT ITS HOSPITAL AT TILLSONBURG, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

14868-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. CANADA SAND PAPERS LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT AT PLATTSVILLE, SAVE AND EXCEPT THE CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

14870-68-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 392 (APPLICANT) V. GLOSTA MANUFACTURING COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PORT HOPE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (9 EMPLOYEES IN THE UNIT).

14883-68-R: PRINTING SPECIALTIES AND PAPER PRODUCTS UNION LOCAL 466 (APPLICANT) V. LAWSON AND JONES TORONTO (RESPONDENT) V. LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION LOCAL 12-L (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN OR FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN OR FORELADY, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND EMPLOYEES COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT WITH LITHOGRAPHERS AND PHOTO ENGRAVERS INTERNATIONAL UNION." (75 EMPLOYEES IN THE UNIT).

14884-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. LINDBERG HEVI-DUTY CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

14885-68-R: TORONTO TYPOGRAPHICAL UNION No. 91 (APPLICANT) V. RAINBOW THERMOGRAPHERS Co. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN COMPOSING ROOM WORK SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (5 EMPLOYEES IN THE UNIT).

14887-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 837 (APPLICANT) V. CATKEY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

14888-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. POCE CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS, AND SHOP AND YARD EMPLOYEES." (9 EMPLOYEES IN THE UNIT).

14892-68-R: HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION A.F.L.-C.I.O.-C.L.C. LOCAL 197 (APPLICANT) V. REGAL HOTEL (HAMILTON) LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT OWNERS AND MANAGERS." (7 EMPLOYEES IN THE UNIT).

14893-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS OPERATIONS AT THE HUDSON'S BAY COMPANY AT SARNIA, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (5 EMPLOYEES IN THE UNIT).

14894-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. AJAX CATERERS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OSHAWA, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (4 EMPLOYEES IN THE UNIT).

14895-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CON-BRIDGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE, THE TOWNSHIP OF PRINCE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO ENGAGED IN THE OPERATION OF CRANES, SHOVELS BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

14896-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WESTWOOD DRAIN CO. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

14900-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796
(APPLICANT) V. L.O.F. GLASS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM AT ITS PLANT AT COLLINGWOOD, SAVE AND EXCEPT CHIEF ENGINEER, PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

14903-68-R: RETAIL CLERKS LOCAL 409 CHARTERED BY RETAIL CLERKS INTERNATIONAL ASSOC. (APPLICANT) V. THE WORKERS' CO-OPERATIVE OF CONSUMERS (FORT WILLIAM) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT WILLIAM, SAVE AND EXCEPT STORE MANAGER AND ASSISTANT STORE MANAGER, PERSONS ABOVE THE RANK OF STORE MANAGER AND ASSISTANT STORE MANAGER." (8 EMPLOYEES IN THE UNIT).

14906-68-R: LOCAL UNION No. 804, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL-CIO-CLC (APPLICANT) V. M. & M. MECHANICALS (ONTARIO) LIMITED (RESPONDENT).

UNIT #1: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL ELECTRICIANS, ELECTRICIANS' APPRENTICES AND HELPERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF DUFFERIN INCLUDING THE TOWN OF ORANGEVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14907-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. N. DI LORENZO CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULL-DOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

14908-68-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION 124 (APPLICANT) V. WALL-CRETE OF CANADA (RESPONDENT).

UNIT: "ALL CEMENT MASONS AND CEMENT MASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14912-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) v. PISAPIA CONSTRUCTION INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14915-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) v. THE QUEEN ELIZABETH HOSPITAL (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT ITS HOSPITAL IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF ASSISTANT CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

14916-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) v. T & K DE BOER CONSTRUCTION & EXCAVATING LTD. (RESPONDENT) v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER).

UNIT: "ALL TRUCK DRIVERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO SECTION 6(1) OF THE LABOUR RELATIONS ACT).

14918-68-R: TEXTILE WORKERS UNION OF AMERICA AFL-CIO, CLC (APPLICANT) v. VIRCHEM OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN AND CHIEF ENGINEERS, PERSONS ABOVE THE RANK OF FOREMAN AND CHIEF ENGINEER, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

14922-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) v. FARQUHAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF SPRINGER, CALDWELL, BADGEROW, FIELD, GRANT AND PEDLEY, EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF GRANT AND PEDLEY WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

14923-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 595 (APPLICANT) v. M. DONN CONSTRUCTION COMPANY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14925-68-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MIDLAND FUELS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MIDLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

14929-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. INSPIRATION LIMITED, HAMILTON BUILDING DIVISION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14930-68-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS' OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) V. MILNER ROAD ENTERPRISES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (5 EMPLOYEES IN THE UNIT).

14933-68-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL - CIO - CLC (APPLICANT) V. SPRUCE MOTORS CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KAPUSKASING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (17 EMPLOYEES IN THE UNIT).

14935-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) V. JANIN BUILDING AND CIVIL WORKS LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

14936-68-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 397 (APPLICANT) V. DEL-CRAFT METAL INDUSTRIES (RESPONDENT).

UNIT: "ALL ROOFERS AND ROOFING PERSONNEL IN THE EMPLOY OF THE RESPONDENT, WORKING AT AND OUT OF PORT ARTHUR, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

14940-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. BEN ORMEL CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

14944-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. D. K. YOUNG CONSTRUCTION (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

14945-68-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, S.E.I.U., A.F. OF L. - C.I.O. - C.L.C. (APPLICANT) V. LISTOWEL DISTRICT SECONDARY SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (7 EMPLOYEES IN THE UNIT).

14949-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. W. A. MCDUGALL LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF ELLIOT LAKE COMPRISING THE GEOGRAPHIC TOWNSHIPS OF PROCTOR, ESTEN AND MCGIVERIN AND GEOGRAPHIC TOWNSHIPS 143, 144, 149, 150, 155 AND 156 IN THE DISTRICT OF ALGOMA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14952-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. PHYSICIANS' SERVICES INCORPORATED (RESPONDENT).

UNIT: "ALL ENROLMENT REPRESENTATIVES OF THE RESPONDENT EMPLOYED IN THE PROVINCE OF ONTARIO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14958-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036
(APPLICANT) V. CON-BRIDGE LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE, THE TOWNSHIP OF PRINCE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

14963-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 2466 (APPLICANT) V. UNI-FORM BUILDERS LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF RENFREW, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14967-68-R: BUILDING SERVICE EMPLOYEE'S UNION LOCAL 268, A.E. OF L. - C.I.O., C.L.C. (APPLICANT) V. SEPARATE SCHOOL BOARD OF FORT WILLIAM (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

14969-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (APPLICANT) V. W. D. LAFLAMME LIMITED (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2466 (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

14970-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. FARQUHAR CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

14971-68-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. KAP IMPERIAL SERVICE STATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KAPUSKASING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (5 EMPLOYEES IN THE UNIT).

14994-68-R: LOCAL UNION NO. 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. THIER AND LEDERER CONST. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

APPLICATIONS FOR CERTIFICATION DISMISSED DURING AUGUST

NO VOTE CONDUCTED

14147-67-R: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS AFL-CIO (APPLICANT) V. MULLER'S MEATS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NIAGARA FALLS, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (3 EMPLOYEES IN THE UNIT).

14362-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. PEARL LAUNDRY CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (40 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 450).

14363-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. NEWTEX LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (58 EMPLOYEES).

14566-68-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. AIRLINE FOOTWEAR INDUSTRIES, A DIVISION OF J. D. CARRIER SHOE COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (42 EMPLOYEES).

14762-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS (APPLICANT) V. ELMWOOD MOTORS, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (14 EMPLOYEES).

14856-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. KILMER VAN NOSTRAND CO. LIMITED (RESPONDENT). (30 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 456).

14889-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. I.W. WOOD PRODUCTS LIMITED (RESPONDENT). (1 EMPLOYEE).

14897-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ROSELAND CONSTRUCTION LTD. (RESPONDENT). (NO EMPLOYEES).

14901-68-R: LOCAL UNION 498 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. INSPIRATION COMPANY (RESPONDENT). (10 EMPLOYEES).

14905-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. RIVERSIDE POULTRY COMPANY LTD. (RESPONDENT) V. AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER). (4 EMPLOYEES).

14910-68-R: LOCAL 721 INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (APPLICANT) V. INSPIRATION LIMITED (BUILDING DIVISION) (RESPONDENT). (5 EMPLOYEES).

14914-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. CON-BRIDGE LIMITED (RESPONDENT). (6 EMPLOYEES).

14966-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. SAPPHIRE DEVELOPMENTS LIMITED (RESPONDENT). (12 EMPLOYEES).

14975-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. MUCON CONTRACTING LIMITED (RESPONDENT). (5 EMPLOYEES).

14980-68-R: THE BRICKLAYER'S, MASONS, AND PLASTERERS INTERNATIONAL UNION OF AMERICA - LOCAL UNION 30 - BELLEVILLE, ONTARIO (APPLICANT) V. MAURICE H. ROLLINS CONSTRUCTION LIMITED, 11 VICTORIA STREET, BELLEVILLE, ONTARIO (RESPONDENT). (7 EMPLOYEES).

14984-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. W. D. LAFLAMME LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13860-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. HI WAY MARKET LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KITCHENER, SAVE AND EXCEPT DEPARTMENT MANAGERS, WAREHOUSE SUPERVISORS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER AND WAREHOUSE SUPERVISOR, OFFICE AND SALES STAFF, SECURITY STAFF, PERSONS REGULARLY EMPLOYED FOR 24 HOURS PER WEEK OR LESS AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (135 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST
NUMBER OF PERSONS WHO CAST BALLOTS

103
102

NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	43
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	57

14574-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC
(APPLICANT) V. SAM BUCOVETSKY STORES LIMITED (RESPONDENT) V. EMPLOYEE
(OBJECTOR).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT IN ITS RETAIL
STORES AT KAPUSKASING, SAVE AND EXCEPT STORE MANAGER, PERSONS ABOVE THE
RANK OF STORE MANAGER, AND SECRETARY TO THE STORE MANAGER." (3 EMPLOYEES
IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	1
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	1

14575-68-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY,
HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T.
(APPLICANT) V. BERTRAND & FRERE CONSTRUCTION CO. LTD. (RESPONDENT) V.
GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN,
PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES
IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	12

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING AUGUST

14904-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
(APPLICANT) V. RENZETTI CONST. LTD. (RESPONDENT). (25 EMPLOYEES).

14924-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA (APPLICANT) V. NORTHERN QUEBEC TRANSPORT LTD. (RESPONDENT) V.
GROUP OF EMPLOYEES (OBJECTORS). (15 EMPLOYEES).

14946-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. RENZETTI CONSTRUCTION LTD. (RESPONDENT). (10 EMPLOYEES).

14950-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
(APPLICANT) V. RENZETTI CONST. LTD. (RESPONDENT). (27 EMPLOYEES).

14951-68-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION
504 (APPLICANT) V. CHARLES R. BISCOMBE LIMITED (RESPONDENT). (10 EMPLOYEES).

14957-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183
(APPLICANT) V. MEL RON (RESPONDENT). (2 EMPLOYEES).

14995-68-R: CENTRAL ONTARIO DISTRICT COUNCIL UNITED BROTHERHOOD OF
CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. C. A. SMITH CONSTRUCTION
COMPANY LIMITED (RESPONDENT). (12 EMPLOYEES).

15009-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL
UNION 93 (APPLICANT) V. AJAX ENGINEERS LTD. (RESPONDENT). (4 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING AUGUST

14628-68-R: ROY TITMUS, DOUG MCGINNIS AND SYDNEY ROCK (APPLICANTS) V.
LOCAL 879 INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
& HELPERS OF AMERICA (RESPONDENT) V. OUR OWN DELIVERY COMPANY LTD.
(INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF OUR OWN DELIVERY COMPANY LTD. AT BRANTFORD, SAVE
AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES
STAFF." (3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	2
NUMBER OF PERSONS WHO CAST BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	2

14917-68-R: FRANCIS ROBITAILLE (APPLICANT) V. CENTRAL ONTARIO DISTRICT
COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(RESPONDENT) V. G. D. MAXWELL CONSTRUCTION LIMITED (INTERVENER).
(DISMISSED). (8 EMPLOYEES).

14921-68-R: EMPLOYEES OF MCPHEES I.G.A. (APPLICANTS) V. RETAIL WHOLESALE
& DEPARTMENT STORE UNION LOCAL 579 (RESPONDENT). (WITHDRAWN). (27 EMPLOYEES).

14938-68-R: SOL HONSBERGER (APPLICANT) V. GENERAL TRUCK DRIVERS UNION,
LOCAL 879 (RESPONDENT) V. INTER COUNTY CONCRETE PROD. LTD. (INTERVENER).
(DISMISSED). (3 EMPLOYEES).

APPLICATION FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING AUGUST

14336-67-U: FIRESTONE TIRE & RUBBER COMPANY OF CANADA, LIMITED, INDUSTRIAL PRODUCTS DIVISION, LINDSAY, ONTARIO (APPLICANT) V. THOSE PERSONS NAMED IN SCHEDULE "A" ATTACHED HERETO (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING AUGUST

14817-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) V. POWELL AGRI-SYSTEMS LIMITED, FRANK GELINAS JOSEPH VAN BOMELL, AND ROBERT WILSON (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 465).

14880-68-U: PRE-CON MURRAY LIMITED (APPLICANT) V. RAY FORD, PETER HITCHEN AND LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (FORMERLY KNOWN AS THE INTERNATIONAL HOD CARRIERS BUILDING AND COMMON LABOURERS UNION, LOCAL 506) (RESPONDENTS). (WITHDRAWN).

14891-68-U: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AERONAUTICAL LODGE 717, TURBO, I.A.M. (APPLICANT) V. ORENDA LIMITED (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

AUGUST

14020-67-U: PAUL MARVIN MCWHIRTER (COMPLAINANT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS LOCAL 721 (RESPONDENT). (WITHDRAWN).

14148-67-U: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS AFL-CIO (COMPLAINANT) V. MULLER'S MEATS LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 466).

14269-67-U: TORONTO NEWSPAPER GUILD, LOCAL 87 (COMPLAINANT) V. PETER-BOROUGH EXAMINER COMPANY LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 483).

14614-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. CORTINA PLASTERING LIMITED (RESPONDENT). (WITHDRAWN).

14615-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) V. CORTINA PLASTERING LIMITED (RESPONDENT). (WITHDRAWN).

14712-68-U: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. BERTRAND AND FRERE CONSTRUCTION Co. LTD. (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 491).

14741-68-U: WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 145 (COMPLAINANT) V. GAMBIN BROTHERS LIMITED, EASTERN CONSTRUCTION COMPANY LIMITED, UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS' OF AMERICA, LOCAL 18 AND CHARLES GUAGLIANO (RESPONDENTS). (DISMISSED).

- AND -

14742-68-U: WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCALS 97 AND 145 (COMPLAINANTS) V. GAMBIN BROTHERS LIMITED, EASTERN CONSTRUCTION COMPANY LIMITED, UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS OF AMERICA, LOCAL 18 AND CHARLES GUAGLIANO (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 494).

14836-68-U: CANADIAN UNION OF GENERAL EMPLOYEES (COMPLAINANT) V. NORTH YORK GENERAL HOSPITAL (RESPONDENT). (WITHDRAWN).

14837-68-U: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, 482 YORK STREET, LONDON, ONTARIO (COMPLAINANT) V. CENTRAL PARK LODGES OF CANADA LIMITED, (KITCHENER) (RESPONDENT). (WITHDRAWN).

14886-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. BELLER STEEL COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING AUGUST

13428-67-M: OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION, CLC, LOCAL 418 (TRADE UNION) V. DOMTAR PULP & PAPER LIMITED (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 505).

14981-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 524 (APPLICANT) V. THE WELLAND BOARD OF EDUCATION (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 506).

INDEXED ENDORSEMENTS - CERTIFICATION

14096-68-R: TEXTILE WORKERS UNION OF AMERICA, CLC AFL-CIO (APPLICANT) V. THE WATSON MANUFACTURING COMPANY OF PARIS LIMITED (RESPONDENT) V. CANADIAN TEXTILE COUNCIL (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, CHAS. CLARK AND ELVIO DALLORTO FOR THE APPLICANT, E. L. STRINGER AND F. ATKINSON FOR THE RESPONDENT, R. K. ROWLEY FOR THE INTERVENER.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
P. J. O'KEEFFE: August 9, 1968.

. . .

2. THIS IS AN APPLICATION FOR CERTIFICATION. THE APPLICANT IN THIS MATTER HAD MADE AN INTERVENER'S APPLICATION FOR CERTIFICATION FOR THE SAME GROUP OF EMPLOYEES IN AN APPLICATION MADE BY CANADIAN TEXTILE COUNCIL (BOARD FILE 13786-67-R). IN THE EARLIER APPLICATION, THE PRESENT APPLICANT HAD ITS INTERVENER'S APPLICATION FOR CERTIFICATION DISMISSED ON DECEMBER 28TH, 1966 ON THE GROUNDS THAT THE BOARD FOUND THAT THERE WAS NO MONEY PAYMENT WITH RESPECT TO ONE OF THE MEMBERSHIP DOCUMENTS SUBMITTED BY IT. IN THE CIRCUMSTANCES, THE NON-PAY CAST THE REST OF ITS MEMBERSHIP EVIDENCE SUBMITTED IN THAT APPLICATION IN DOUBT AND THEREFORE THE BOARD COULD NOT PLACE ANY RELIANCE ON IT AND DISMISSED ITS APPLICATION FOR CERTIFICATION.

3. THE CANADIAN TEXTILE COUNCIL, THE PRESENT INTERVENER AND THE APPLICANT IN THE EARLIER APPLICATION, HAD ITS APPLICATION FOR CERTIFICATION DISMISSED FOLLOWING THE TAKING OF THE REPRESENTATION VOTE SINCE MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT VOTED AGAINST IT. IN ACCORDANCE WITH ITS USUAL PRACTICE, THE BOARD IMPOSED A SIX MONTH BAR ON FUTURE APPLICATIONS BY CANADIAN TEXTILE COUNCIL WITH RESPECT TO EMPLOYEES OF THE RESPONDENT.

4. IN THE PRESENT CASE, THE INTERVENER ARGUED THAT THE APPLICANT'S APPLICATION IS UNTIMELY SINCE IT WAS MADE WITHIN A MONTH FOLLOWING THE DISMISSAL OF THE APPLICANT'S INTERVENER'S APPLICATION FOR CERTIFICATION (BOARD FILE 13786-67-R). THE INTERVENER FURTHER ARGUED THAT SINCE THE BOARD IMPOSES A BAR AGAINST AN UNSUCCESSFUL APPLICANT FOLLOWING THE TAKING OF A REPRESENTATION VOTE, IN ORDER TO BE CONSISTENT THE BOARD SHOULD ALSO IMPOSE A BAR WHERE IT DISMISSES A UNION BECAUSE OF NON-PAY. THE INTERVENER'S POSITION WAS THAT A UNION WHICH HAS ATTEMPTED TO COMMIT A FRAUD ON THE BOARD BY SUBMITTING MEMBERSHIP CARDS FOR WHICH NO MONEY HAS BEEN RECEIVED IS MORE CULPABLE THAN A UNION WHICH FAILS TO OBTAIN THE SUPPORT OF A MAJORITY OF THE EMPLOYEES IN A REPRESENTATION VOTE. THE INTERVENER THEREFORE ARGUED THAT THE PRESENT APPLICANT WHICH HAD SUBMITTED AN APPLICATION SUPPORTED BY FRAUDULENT EVIDENCE SHOULD NOT BE LEFT IN A POSITION OF ADVANTAGE OVER THE INTERVENER IN THESE CIRCUMSTANCES AND THE BOARD SHOULD THEREFORE FIND THAT THE APPLICANT'S PRESENT APPLICATION IS UNTIMELY.

5. IF THE BOARD'S JURISDICTION WERE EXTENDED SO THAT THE BOARD HAD PUNITIVE POWERS, THERE WOULD BE MERIT IN THE ARGUMENT MADE BY THE INTERVENER. HOWEVER, THE BOARD'S JURISDICTION UNDER THE LABOUR RELATIONS ACT IN AN APPLICATION FOR CERTIFICATION IS CONFINED TO ASCERTAINING THE TRUE WISHES OF EMPLOYEES WITH RESPECT TO THE TRADE UNION'S RIGHT TO REPRESENT THEM IN AN APPROPRIATE BARGAINING UNIT. WHERE THE TRUE WISHES OF EMPLOYEES HAVE BEEN ESTABLISHED WITH THE CERTAINTY PERMITTED BY A

REPRESENTATION VOTE, THE BOARD, UNDER THE AUTHORITY OF SECTION 77(2)(1), IMPOSES A BAR OF SIX MONTHS ON FUTURE APPLICATIONS BY THAT UNION. THE BOARD IMPOSES THE BAR WITH THE VIEW TO PROMOTING A SOUND EMPLOYER-EMPLOYEE RELATIONSHIP BY AVOIDING THE CONFUSION AND TURMOIL OF REPETITIVE APPLICATIONS BY A UNION WHICH HAS BEEN GIVEN FULL AND COMPLETE OPPORTUNITY TO ESTABLISH ITS RIGHT TO REPRESENT THE EMPLOYEES THROUGH A REPRESENTATION VOTE. IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 77(2)(1), THE BOARD ENDEAVOURS TO PROVIDE A COOLING OFF PERIOD DURING WHICH THE EMPLOYEES MAY ASSESS THEIR POSITION WITH RESPECT TO THEIR DESIRE TO BE REPRESENTED BY THE APPLICANT UNION BY TEMPORARILY POSTPONING REPETITIVE APPLICATIONS FOR CERTIFICATION BY THAT UNION.

6. IN THE CASE WHERE NON-PAY HAS BEEN ESTABLISHED AND THE BOARD IS PLACED IN THE POSITION WHERE IT CAN PLACE NO RELIANCE ON THE UNION'S EVIDENCE OF MEMBERSHIP, THE BOARD IS UNABLE TO FIND THAT THE UNION ENJOYS THE SUPPORT OF AT LEAST FORTY-FIVE PER CENT OF THE EMPLOYEES AND THEREFORE HAS NO JURISDICTION TO DIRECT A REPRESENTATION VOTE. IN MAKING THE FINDING THAT IT IS UNABLE TO PLACE RELIANCE ON THE EVIDENCE OF MEMBERSHIP SUBMITTED, SUCH FINDING IS CONCERNED ONLY WITH RESPECT TO THE EVIDENTIARY VALUE OF THE MEMBERSHIP DOCUMENTS. IT IS NOT A FINDING MADE FOLLOWING A TEST OF THE ACTUAL SUPPORT THAT THE UNION ENJOYS AMONG ALL THE COMPANY'S EMPLOYEES.

7. WHILE A UNION, WHICH HAS BEEN FOUND GUILTY OF NON-PAY, HAS BY ITS OWN ACTIVITIES DESTROYED THE EVIDENTIARY VALUE OF ITS MEMBERSHIP EVIDENCE, EITHER IN WHOLE IF A UNION OFFICIAL IS INVOLVED, OR IN PART IF A RANK AND FILE EMPLOYEE HAS PERPETRATED THE FRAUD, IT CANNOT BE SAID THAT THE BOARD IN MAKING SUCH FINDING HAS ASCERTAINED THE TRUE WISHES OF THE EMPLOYEES. ON THE CONTRARY, THE BOARD IS UNABLE TO ASCERTAIN THE WISHES OF THE EMPLOYEES SINCE THE EVIDENCE OF THEIR WISHES HAS BEEN CAST IN DOUBT. WHERE THE TRUE WISHES OF EMPLOYEES HAVE NOT BEEN ASCERTAINED, IT IS NOT THE BOARD'S PRACTICE TO IMPOSE A BAR ON FUTURE APPLICATIONS BY THE UNSUCCESSFUL UNION.

8. WE ARE OF OPINION THAT THE LABOUR RELATIONS ACT HAS NOT EMPOWERED THE BOARD TO TAKE DIRECT DISCIPLINARY ACTION AGAINST AN OFFENDING UNION, ANY MORE THAN THE BOARD CAN TAKE DIRECT PUNITIVE ACTION AGAINST A COMPANY WHICH HAS ACTED CONTRARY TO THE PROVISIONS OF THE ACT. IF A TRADE UNION, A COMPANY OR ANY PERSON ENGAGES IN ACTIONS CONTRARY TO THE ACT AND AN OPPOSING PARTY WISHES TO HAVE THE OFFENDING PARTY PUNISHED, THE APPROPRIATE REMEDY MAY BE FOUND IN SECTION 69 OF THE ACT AND A PARTY WISHING TO INVOKE THIS REMEDY IS AT LIBERTY TO APPLY FOR CONSENT TO PROSECUTE.

9. WHILE THE BOARD HAS CERTAIN DISCRETIONARY POWERS TO BAR UNSUCCESSFUL APPLICANTS, SUCH DISCRETIONARY POWERS MAY ONLY BE EXERCISED IN A MANNER CONSISTENT WITH THE BOARD'S JURISDICTION, E.G., TO DETERMINE THE TRUE WISHES OF EMPLOYEES IN AN APPLICATION FOR CERTIFICATION. WE ARE THEREFORE OF OPINION THAT TO BAR AN APPLICANT BECAUSE OF PREVIOUS IRREGULAR OR IMPROPER CONDUCT WOULD NOT BE A PROPER EXERCISE OF THE BOARD'S DISCRETION UNDER SECTION 77(2)(1) OF THE LABOUR RELATIONS ACT UNLESS SUCH

PRIOR CONDUCT REFLECTED UPON THE MEMBERSHIP EVIDENCE FILED IN A SUBSEQUENT APPLICATION. WHERE, AS IN THIS CASE, A UNION FILES FRESH EVIDENCE OF MEMBERSHIP WHICH IS UNTAINTED BY PRIOR ACTIVITIES, IT CANNOT PROPERLY BE SAID THAT THE FRESH EVIDENCE IS UNRELIABLE EVIDENCE. IF THE FRESH MEMBERSHIP EVIDENCE IS RELIABLE EVIDENCE, THE BOARD MUST GIVE EFFECT TO IT PURSUANT TO THE PROVISIONS OF SECTION 7 OF THE ACT.

10. THE INTERVENER FURTHER ARGUED THAT THE BOARD IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 77(3) OF THE ACT SHOULD HAVE REFUSED TO ENTERTAIN THE INSTANT APPLICATION. WHERE A SUBSEQUENT APPLICATION IS MADE DURING A TIME WHEN THE BOARD IS SEIZED WITH AN APPLICATION FOR CERTIFICATION WHICH HAS NOT BEEN DISPOSED OF, THE BOARD HAS THREE COURSES OF ACTION TO FOLLOW UNDER THE PROVISIONS OF SECTION 77(3) OF THE ACT. THE BOARD MAY "TREAT THE SUBSEQUENT APPLICATION AS HAVING BEEN MADE ON THE DATE OF THE MAKING OF THE ORIGINAL APPLICATION" PURSUANT TO THE PROVISIONS OF SECTION 77(3)(A). THE BOARD NORMALLY ADOPTS THIS COURSE OF ACTION WHEN THE SUBSEQUENT APPLICATION IS MADE ON OR BEFORE THE TERMINAL DATE OF THE EARLIER APPLICATION.

11. THE SECOND COURSE OF ACTION OPEN TO THE BOARD IS TO "POSTPONE CONSIDERATION OF THE SUBSEQUENT APPLICATION UNTIL A FINAL DECISION HAS BEEN ISSUED ON THE ORIGINAL APPLICATION AND THEREAFTER CONSIDER THE SUBSEQUENT APPLICATION BUT SUBJECT TO ANY FINAL DECISION ISSUED BY THE BOARD ON THE ORIGINAL APPLICATION", UNDER SECTION 77(3)(B). THE BOARD ADOPTS THIS COURSE OF ACTION IN CASES WHERE THE SUBSEQUENT APPLICATION IS MADE AFTER THE TERMINAL DATE OF THE EARLIER APPLICATION.

12. THE FINAL COURSE OF ACTION WHICH IS AUTHORIZED BY SECTION 77(3)(C) IS TO "REFUSE TO ENTERTAIN THE SUBSEQUENT APPLICATION". THIS COURSE OF ACTION IS ADOPTED WHERE THE BOARD PROCEEDS UNDER SECTION 77(3)(B) AND THE BOARD IN ITS DISPOSITION OF THE EARLIER APPLICATION CERTIFIES THE APPLICANT IN THE EARLIER APPLICATION. WHEN THE BOARD CONSIDERS THE SUBSEQUENT APPLICATION IT MUST DO SO "SUBJECT TO ANY FINAL DECISION ISSUED BY THE BOARD ON THE ORIGINAL APPLICATION". WHERE THE BOARD HAS CERTIFIED THE APPLICANT IN THE ORIGINAL APPLICATION, THE BOARD IS THEN AUTHORIZED TO "REFUSE TO ENTERTAIN THE SUBSEQUENT APPLICATION". ON THE FACTS OF THIS CASE, SINCE THE INSTANT APPLICATION WAS MADE AFTER THE TERMINAL DATE OF THE EARLIER APPLICATION MADE BY CANADIAN TEXTILE COUNCIL, THE BOARD ADOPTED THE PROCEDURE UNDER SECTION 77(3)(B) OF THE ACT. SINCE THE EARLIER APPLICATION WAS DISMISSED, THE BOARD WAS THEN IN A POSITION TO PROCESS THE INSTANT APPLICATION AND THIS IT HAS DONE. IN ADOPTING THE PROCEDURE DESCRIBED ABOVE, THE BOARD HAS ACTED IN A MANNER CONSISTENT WITH ITS PAST PRACTICE OF APPLYING THE PROVISIONS OF SECTION 77(3) OF THE ACT.

13. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

14. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY,

OFFICE STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STATIONARY ENGINEERS COVERED BY THE BOARD'S CERTIFICATE IN FAVOUR OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS DATED NOVEMBER 9, 1965, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

15. THE BOARD NOTES THAT ALL THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE IS FRESH EVIDENCE OF MEMBERSHIP WHICH WAS NOT USED BY THE APPLICANT IN ITS INTERVENER'S APPLICATION FOR CERTIFICATION IN BOARD FILE 13786-67-R REFERRED TO ABOVE. IN THESE CIRCUMSTANCES AND IN THE ABSENCE OF ANY EVIDENCE TO THE CONTRARY, THE BOARD FINDS THAT THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT IN THIS CASE IS NOT TAINTED IN ANY WAY BY THE APPLICANT'S ACTIVITIES IN THE EARLIER APPLICATION.

16. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 8TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

17. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN:

AUGUST 9, 1968.

1. WHILE I CONCUR IN THE DECISION OF THE BOARD TO CERTIFY THE APPLICANT UNION, I AM UNABLE TO SUBSCRIBE TO THE OPINIONS OF MY COLLEAGUES AS EXPRESSED IN PARAGRAPHS 8 AND 9 THEREOF WHICH READ AS FOLLOWS:

8. WE ARE OF OPINION THAT THE LABOUR RELATIONS ACT HAS NOT EMPOWERED THE BOARD TO TAKE DIRECT DISCIPLINARY ACTION AGAINST AN OFFENDING UNION, ANY MORE THAN THE BOARD CAN TAKE DIRECT PUNITIVE ACTION AGAINST A COMPANY WHICH HAS ACTED CONTRARY TO THE PROVISIONS OF THE ACT. IF A TRADE UNION, A COMPANY OR ANY PERSON ENGAGES IN ACTIONS CONTRARY TO THE ACT AND AN OPPOSING PARTY WISHES TO HAVE THE OFFENDING PARTY PUNISHED, THE APPROPRIATE REMEDY MAY BE FOUND IN SECTION 69 OF THE ACT AND A PARTY WISHING TO INVOKE THIS REMEDY IS AT LIBERTY TO APPLY FOR CONSENT TO PROSECUTE.

9. WHILE THE BOARD HAS CERTAIN DISCRETIONARY POWERS TO BAR UNSUCCESSFUL APPLICANTS, SUCH DISCRETIONARY POWERS MAY ONLY BE EXERCISED IN A MANNER CONSISTENT WITH THE BOARD'S JURISDICTION, E.G., TO DETERMINE THE TRUE

WISHES OF EMPLOYEES IN AN APPLICATION FOR CERTIFICATION. WE ARE THEREFORE OF OPINION THAT TO BAR AN APPLICANT BECAUSE OF PREVIOUS IRREGULAR OR IMPROPER CONDUCT WOULD NOT BE A PROPER EXERCISE OF THE BOARD'S DISCRETION UNDER SECTION 77(2)(1) OF THE LABOUR RELATIONS ACT UNLESS SUCH PRIOR CONDUCT REFLECTED UPON THE MEMBERSHIP EVIDENCE FILED IN A SUBSEQUENT APPLICATION. WHERE, AS IN THIS CASE, A UNION FILES FRESH EVIDENCE OF MEMBERSHIP WHICH IS UNTAINTED BY PRIOR ACTIVITIES, IT CANNOT PROPERLY BE SAID THAT THE FRESH EVIDENCE IS UNRELIABLE EVIDENCE. IF THE FRESH MEMBERSHIP EVIDENCE IS RELIABLE EVIDENCE, THE BOARD MUST GIVE EFFECT TO IT PURSUANT TO THE PROVISIONS OF SECTION 7 OF THE ACT.

2. SECTIONS 77(1) AND (2)(1) OF THE LABOUR RELATIONS ACT READ AS FOLLOWS:

77.--(1) THE BOARD SHALL EXERCISE SUCH POWERS AND PERFORM SUCH DUTIES AS ARE CONFERRED OR IMPOSED UPON IT BY OR UNDER THIS ACT.

(2) WITHOUT LIMITING THE GENERALITY OF SUBSECTION 1, THE BOARD HAS POWER,

(1) TO BAR AN UNSUCCESSFUL APPLICANT FOR ANY PERIOD NOT EXCEEDING TEN MONTHS FROM THE DATE OF THE DISMISSAL OF THE UNSUCCESSFUL APPLICATION, OR TO REFUSE TO ENTERTAIN A NEW APPLICATION BY AN UNSUCCESSFUL APPLICANT OR BY ANY OF THE EMPLOYEES AFFECTED BY AN UNSUCCESSFUL APPLICATION OR BY ANY PERSON OR TRADE UNION REPRESENTING SUCH EMPLOYEES WITHIN ANY PERIOD NOT EXCEEDING TEN MONTHS FROM THE DATE OF THE DISMISSAL OF THE UNSUCCESSFUL APPLICATION;

3. IN CLEAR AND UNAMBIGUOUS LANGUAGE SUBSECTION (2)(1) OF SECTION 77 GIVES THE BOARD THE UNFETTERED RIGHT TO BAR AN UNSUCCESSFUL APPLICANT FOR A PERIOD UP TO TEN MONTHS FROM THE DATE OF THE DISMISSAL OF THE UNSUCCESSFUL APPLICATION. NO QUALIFICATION OR RESTRICTION OF ANY KIND IS PLACED ON THE BOARD AS TO THE TYPE OF UNSUCCESSFUL APPLICATION OR THE REASONS WHY THE APPLICATION WAS DISMISSED. IF THE APPLICATION IS UNSUCCESSFUL THE BOARD, IN ITS DISCRETION, MAY IMPOSE A BAR ON THE UNSUCCESSFUL APPLICANT FROM MAKING A NEW APPLICATION OR REFUSE TO ENTERTAIN A NEW APPLICATION BY THE UNSUCCESSFUL APPLICANT OR BY ANY PERSON OR TRADE UNION REPRESENTING SUCH EMPLOYEES WITHIN ANY PERIOD NOT EXCEEDING TEN MONTHS FROM THE DATE OF THE DISMISSAL OF THE UNSUCCESSFUL APPLICATION. THERE IS NO QUESTION AS TO THE BOARD'S JURISDICTION BUT PURELY A MATTER OF THE BOARD'S DISCRETION.

4. IN ANY EVENT, IN THE INSTANT CASE THE ISSUE OF THE BOARD'S JURISDICTION TO BAR AN UNSUCCESSFUL APPLICANT WAS NOT RAISED AND THE OPINION EXPRESSED THEREON IN PARAGRAPHS 8 AND 9 OF THE BOARD'S DECISION AS WELL AS MY OWN IN THIS DECISION ARE OBITER DICTUM.

14152-67-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF LONDON (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., E. B. PARKER, AND F. H. PYKE FOR THE APPLICANT, W. D. SUTTON, R. W. SCOTT, W. MAGEE, AND GEORGE MITCHES FOR THE RESPONDENT, AND DR. H. J. FEENSTRA FOR THE GROUP OF EMPLOYEES.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBER
O. HODGES: AUGUST 8, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

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3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, TECHNICAL EMPLOYEES, SECRETARY TO THE TRUSTEES, SECRETARIES - EXECUTIVE SECRETARY'S OFFICE, ADMINISTRATIVE SECRETARY, PRIVATE SECRETARY TO THE EXECUTIVE SECRETARY, SECRETARY TO THE SUPERINTENDENT OF BUSINESS, SECRETARY TO THE MANAGER - ADMINISTRATIVE SERVICES, ASSISTANT TO THE ADMINISTRATIVE SECRETARY - DIRECTOR'S OFFICE, SYSTEMS ANALYSTS, AND PERSONS REGULARLY EMPLOYED FOR 24 HOURS OR LESS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. ON THE BASIS OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER HEREIN DATED THE 29TH OF APRIL, 1968, THE SUBMISSIONS MADE WITH RESPECT THERETO BY THE PARTIES AT THE HEARING HELD BEFORE THE BOARD ON JUNE 17TH, 1968, AND THE AGREEMENT OF THE PARTIES DATED JUNE 24TH, 1968, THE BOARD FINDS AS FOLLOWS:

- 1) THE SECRETARY TO THE MANAGER - CUSTODIAL SERVICES, AND THE SECRETARY TO THE MANAGER - MAINTENANCE SERVICES, ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. THE EMPLOYMENT OF THE ABOVE TWO SECRETARIES FALLS WITHIN THE PROVISIONS OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT, AND THEY ARE THEREFORE

EXCLUDED FROM THE BARGAINING UNIT. IN MAKING THIS FINDING, THE BOARD HAS TAKEN INTO ACCOUNT THE INFORMATION SET OUT IN PARAGRAPH 2, SUB-SECTION 1, OF THE EXAMINER'S REPORT.

- 2) THE BOARD FINDS THAT THE PUBLIC SCHOOL SECRETARIES DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.
 - 3) THE BOARD FINDS THAT MRS. M. L. HAMILTON, PERSONNEL CLERK, DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, AND IS INCLUDED IN THE BARGAINING UNIT.
 - 4) THE BOARD FINDS THAT GRAHAM ALFORD AND HELEN HOUSE, BUYERS, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, AND ARE EXCLUDED FROM THE BARGAINING UNIT.
 - 5) THE BOARD FINDS THAT BRUCE LOCKWOOD AND D. W. RICHINGS, ASSISTANT BUYERS, DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT, AND ARE THEREFORE INCLUDED IN THE BARGAINING UNIT.
 - 6) THE BOARD FINDS THAT W. SHWETZ, ACCOUNTANT, AND MARG. ROBINSON, ASSISTANT ACCOUNTANT, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE EXCLUDED FROM THE BARGAINING UNIT.
5. FOR THE PURPOSES OF CLARITY THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT:

- 1) PERSONS EMPLOYED IN THE FOLLOWING OCCUPATIONAL CLASSIFICATIONS ARE TECHNICAL EMPLOYEES:

DRAFTSMEN, PSYCHOLOGISTS, DENTAL NURSES AND DENTAL NURSING ASSISTANTS, EDUCATIONAL T.V. TECHNICIANS AND AUDIO VISUAL TECHINCANS;

- 2) ATTENDANCE COUNSELLORS ARE ABOVE THE RANK OF SUPERVISOR.

6. THERE WAS FILED WITH THE BOARD A STATEMENT OF OBJECTIONS OR PETITION IN OPPOSITION TO THE APPLICATION. THE BOARD DIRECTS THE REGISTRAR TO LIST THIS MATTER FOR CONTINUATION OF HEARING TO HEAR EVIDENCE AND REPRESENTATIONS WITH RESPECT TO THE ORIGINATION AND CIRCULATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED, AND ALL OUTSTANDING ISSUES.

DISSENT OF BOARD MEMBER J. E. C. ROBINSON:

August 8, 1968.

I DISSENT ONLY FROM THE FINDING OF THE MAJORITY THAT MRS. M. L. HAMILTON, PERSONNEL CLERK, SHOULD BE INCLUDED IN THE BARGAINING UNIT. I WOULD FIND THAT SHE EXERCISES MANAGERIAL FUNCTIONS AND IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

IF IT IS NECESSARY TO HIRE SOMEBODY, SHE CHECKS HER SUPPLY OF COMPLETED APPLICATIONS AND SELECTS SEVERAL SUITABLE ONES. SHE THEN INTERVIEWS THESE JOB APPLICANTS. THIS IN ITSELF IS A DECISION-MAKING PROCESS. WHILE SHE DOES NOT ULTIMATELY HIRE THESE APPLICANTS HERSELF, SHE GIVES THEM THE INITIAL APTITUDE AND TYPING TESTS AND IS IN A POSITION TO REJECT APPLICANTS BEFORE THEY PROCEED TO THE MEMBER OF MANAGEMENT WHO MAY ULTIMATELY HIRE SUCH APPLICANT. SHE ESTIMATES THAT SHE MIGHT BE INVOLVED IN THIS SCREENING PROCESS APPROXIMATELY ONE HUNDRED TIMES A YEAR.

SHE KEEPS HISTORY CARDS FOR ALL EMPLOYEES IN HER OFFICE, AND THE PERSONNEL CARDS FOR NON-TEACHING EMPLOYEES.

WHEN REFERRING CANDIDATES FOR SECRETARIAL WORK (FOR EXAMPLE), SHE TAKES INTO CONSIDERATION THEIR APPEARANCE, MANNER, ETC., IN ADDITION TO THE TEST RESULTS WHICH SHE OBTAINS.

SHE MAINTAINS PERSONNEL RECORDS ON THE CUSTODIAL, MAINTENANCE, AND SECRETARIAL STAFF. ATTENDANCE RECORD CARDS ARE POSTED UNDER HER DIRECTION. THE PERSONNEL FILES ARE KEPT IN A FILING CABINET IN HER OFFICE, TO WHICH SHE HAS A KEY AND WHICH SHE LOCKS AT NIGHT.

IN HER EXAMINATION, SHE TESTIFIED THAT THERE WAS NO ONE ELSE PERFORMING PERSONNEL WORK EXCLUSIVELY. SHE SAID THAT SHE CONSIDERS THE FILES WHICH SHE HOLDS AND MAINTAINS TO BE CONFIDENTIAL.

ON THE BASIS OF THE REPORT OF THE EXAMINER ON HER DUTIES, I WOULD FIND THAT SHE EXERCISES MANAGERIAL FUNCTIONS AND IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

DECISION OF THE BOARD: August 19, 1968.

1. THE GROUP OF EMPLOYEES ADVISED THE BOARD BY TELEGRAM RECEIVED BY THE BOARD ON AUGUST 14TH, 1968, THAT THEY WERE WITHDRAWING THE PETITION. THE HEARING DIRECTED BY THE BOARD IN ITS DECISION OF AUGUST 8TH, 1968, WAS ACCORDINGLY CANCELLED, THERE BEING NO OTHER ISSUE RAISED. THE BOARD THEREFORE PROCEEDS TO DISPOSE OF THE APPLICATION WITHOUT REGARD TO THE PETITION.

2. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DETERMINED IN PARAGRAPH 3 OF THE BOARD'S DECISION DATED AUGUST 8TH, 1968, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON FEBRUARY 21ST, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

3. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14362-67-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V.
PEARL LAUNDRY CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
J. E. C. ROBINSON AND A. MAIN.

APPEARANCES AT THE HEARING: G. J. CHARNEY, J. SUTTER, AND S. G. CLAIR FOR THE APPLICANT; W. S. COOK, A. A. MORACHER, W. E. RENAUD, AND W. TOVELL FOR THE RESPONDENT; AND J. P. GIFFEN FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: August 19, 1968.

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2. THIS IS AN APPLICATION FOR CERTIFICATION DURING THE COURSE OF WHICH AN ALLEGATION WAS MADE THAT WILLIAM WARD, WHOM THE APPLICANT CLAIMS AS A MEMBER, DID NOT PAY THE ONE-DOLLAR INITIATION FEE AS INDICATED ON HIS CARD AND BY FORM 8. THE BOARD CONDUCTED ITS CUSTOMARY PRELIMINARY INVESTIGATION, AND THE MATTER WAS SET DOWN FOR HEARING. A FIRST HEARING ON THIS ASPECT OF THE CASE WAS HELD ON MAY 13TH, 1968, AND A SECOND ON JUNE 26TH, 1968. THE CARD INDICATES THAT \$1.00 INITIATION FEE WAS RECEIVED BY JOE SUTTER. THE CARD CARRIES THE STATEMENT: "I HEREBY CERTIFY THAT I PAID THE ABOVE AMOUNT." THIS STATEMENT IS SUBSCRIBED BY THE ADMITTED SIGNATURE OF WILLIAM WARD WHO NOW DENIES THE ACCURACY OF THAT STATEMENT.

3. THERE IS, AS MIGHT BE EXPECTED, A DIRECT CONFLICT OF EVIDENCE BETWEEN WARD AND HIS WIFE ON THE ONE HAND AND JOE SUTTER, A DISTRICT REPRESENTATIVE OF THE APPLICANT, AND STANLEY G. CLAIR, INTERNATIONAL REPRESENTATIVE, ON THE OTHER, AS TO WHETHER OR NOT THE DOLLAR WAS PAID ON MARCH 11TH, 1968, WHEN THE CARD WAS SIGNED OR AT ANY OTHER TIME.

4. WARD'S TESTIMONY WAS THAT ON MARCH 11TH, 1968, HE AND HE WIFE DROVE INTO TOWN IN ORDER TO BUY SOME WAX FOR A SHUFFLE BOARD. HE STATED THAT HE FOUND THAT THE WAX COST \$2.50. HE STATED THAT ALL HE HAD WAS \$2.15 AND THAT HE WENT INTO THE PEARL LAUNDRY, IN WHOSE CUSTOMERS' LOT HE WAS PARKED, AND BORROWED 50¢ FROM ESTHER PRINCE, ONE OF THE EMPLOYEES OF THE LAUNDRY WHOM HE KNEW. HE THEN PURCHASED THE WAX IN THE KENT HOTEL AND WAS PROCEEDING TO HIS CAR WHEN HE WAS MET BY SUTTER AND CLAIR, WHO TOLD HIM THEY WANTED TO TALK TO HIM ABOUT THE UNION. WARD PUT THE WAX IN HIS OWN CAR AND JOINED THE TWO MEN IN THEIRS.

5. THE THREE DISCUSSED UNION MATTERS IN THE CAR AND WARD SIGNED THE CARD. IT IS COMMON GROUND THAT NO MONEY HAD BEEN PAID WHEN THE RECEIPT PORTION WAS SIGNED BY SUTTER AND THE CERTIFICATION OF PAYMENT BY WARD. IT WAS WARD'S TESTIMONY THAT HE TOLD SUTTER AND CLAIR THAT HE DID NOT HAVE A DOLLAR ON HIM. THEY DO NOT DISPUTE THIS. WARD SAYS THAT WHEN THEY KNEW HE DID NOT HAVE THE MONEY THEY TOLD HIM IT WOULD BE ALL RIGHT. THEY SAID THEY WOULD COLLECT FROM HIM LATER. HE THEN RETURNED TO HIS CAR AND WENT HOME. HE TESTIFIED THAT NO FURTHER REQUEST FOR THE DOLLAR WAS EVER MADE TO HIM BY ANYONE IN THE UNION AND THAT HE HAS NOT PAID IT.

6. SUTTER'S AND CLAIR'S EVIDENCE WAS THAT THEY HAD MET WARD AS HE CAME OUT OF THE KENT HOTEL AND INVITED HIM TO THEIR CAR. THEIR EVIDENCE IS THAT THE CARD WAS SIGNED AS WARD'S TESTIMONY HAS IT BUT THAT ON DISCOVERING THAT HE DID NOT HAVE THE DOLLAR FEE THEY ARRANGED TO PICK IT UP FROM HIM AT HIS HOME, AT WHICH TIME WARD WAS TO GIVE THEM THE NAMES AND ADDRESSES OF OTHER DRIVERS. THEIR EVIDENCE WAS THAT WARD LEFT THEIR CAR AND WAS WALKING TOWARDS HIS OWN WHEN HIS WIFE GOT OUT OF THE CAR AND CAME TO MEET HIM. THE UNION MEN TESTIFIED THAT WARD'S WIFE GAVE HIM SOMETHING AND THAT WARD THEN RETURNED TO THEIR CAR AND PAID CLAIR \$1.00 IN CHANGE, WHEREUPON THE LATTER REMOVED A DETACHABLE RECEIPT FROM THE CARD AND GAVE IT TO WARD.

7. CLAIR STATED IN HIS EVIDENCE THAT IT WAS NORMAL PRACTICE FOR HIM TO HAVE AN APPLICANT SIGN THE APPLICATION PORTION AND THE CERTIFICATION-OF-PAYMENT SECTION BEFORE MONEY WAS COLLECTED. IF THE APPLICANT HAD NO MONEY AT THE TIME, CLAIR WOULD SIMPLY "FILE" THE CARD IN HIS POCKET UNTIL PAYMENT WAS MADE, AT WHICH TIME HE WOULD REMOVE THE DETACHABLE RECEIPT AND GIVE IT TO THE APPLICANT. THUS, THE ONLY RECORD HE HAD AS TO WHO HAD PAID THEIR DOLLAR WAS THE DETACHABLE RECEIPT WHICH IS FASTENED TO THE CARD ITSELF BY A PERFORATED JOINT DESIGNED FOR REMOVAL. THE ACCIDENTAL REMOVAL OF THE RECEIPT PORTION COULD, THEREFORE, ALTER AN UNPAID CARD INTO A PAID ONE. THE DANGERS INHERENT IN SO OBVIOUSLY INEPT A METHOD OF OPERATION SHOULD HAVE BEEN APPARENT TO THE ORGANIZERS IN THIS CASE. ITS USE SIMPLY COURTS DISASTER.

8. THE BOARD ARRANGED THE SECOND HEARING ON THIS MATTER FOR THE PURPOSE OF HEARING THE TESTIMONY OF WARD'S WIFE. BOTH SIDES IN THIS ISSUE MADE REFERENCE TO MRS. WARD AT THE ORIGINAL HEARING, BUT NEITHER, APPARENTLY, FELT CONSTRAINED TO CALL HER. SHE WAS CALLED BY THE BOARD.

9. IN WEIGHING THE TESTIMONY OF MRS. WARD THE BOARD WAS AND IS MINDFUL OF THE FACT THAT SHE IS THE WIFE OF WILLIAM WARD. MRS. WARD WAS EXTREMELY NERVOUS BUT, HAVING IN MIND HER DEMEANOUR IN THE WITNESS STAND AND THE MANNER IN WHICH SHE GAVE HER TESTIMONY, THE BOARD IS SATISFIED AS TO THE CREDIBILITY OF THIS WITNESS.

10. MRS. WARD STATED THAT WHEN SHE AND HER HUSBAND FOUND OUT THE PRICE OF THE WAX THEY EMPTIED HER PURSE TO SEE IF THEY COULD SCRAPE UP ENOUGH MONEY BETWEEN THEM. THEY FOUND THEY WERE SHORT, AND HER HUSBAND THEN WENT INTO THE LAUNDRY TO BORROW, SHE THOUGHT 80¢, FROM ESTHER PRINCE. HER HUSBAND BOUGHT THE WAX AND PUT IT IN THE CAR. HE TOLD HER HE WAS GOING TO TALK TO THE TWO UNION MEN AND WENT WITH THEM TO THE CAR. HE WAS THERE SO LONG THAT SHE BECAME IMPATIENT AND GOT OUT OF THE CAR TO SEE WHAT WAS KEEPING HIM. HE THEN EMERGED FROM THE UNION CAR AND MET HER. HE SAID, "THEY WANTED A DOLLAR BUT WILL GET IT LATER." SHE DENIED GIVING MONEY TO HER HUSBAND AT THIS TIME AND INSISTED THAT SHE HAD HAD NO MONEY LEFT AFTER SHE GAVE HIM THE MONEY TO BUY THE WAX.

11. IN ALL OF THIS THERE IS ONE HIGHLY SIGNIFICANT AND, TO OUR MIND, MOST TELLING PIECE OF EVIDENCE UPON WHICH ALL WITNESSES AGREE. THIS KEY FACT IS THAT WARD BORROWED MONEY FROM ESTHER PRINCE IN ORDER TO PURCHASE THE WAX. THE UNION FRANKLY ADMITTED THAT THIS HAD HAPPENED. AS TO WHETHER THE AMOUNT WAS 50¢ OR 80¢ DOES NOT APPEAR MATERIAL HERE.

12. IN OUR OPINION THE ABOVE UNDISPUTED FACT WEIGHTS THE BALANCE OF PROBABILITIES CLEARLY AND PERSUASIVELY IN FAVOUR OF WARD'S ACCOUNT OF THE MATTER. THE QUESTION IS SIMPLY THIS: IF WARD'S WIFE HAD SUFFICIENT MONEY TO GIVE HIM A DOLLAR, OR EVEN 85¢ (SINCE THERE WAS SOME EVIDENCE THAT HE HAD 10¢ OR 15¢ IN HIS POCKET) FOR UNION DUES, WHY WOULD HE HAVE GONE TO A STRANGER TO BORROW 50¢ OR 80¢ IN ORDER TO BUY THE WAX? SUCH A COURSE OF CONDUCT WOULD SURELY BE UNNATURAL AND UNREASONABLE IF THE CIRCUMSTANCES AS TO MRS. WARD'S FINANCES WERE AS THE UNION CONTENTS.

13. THE BOARD FINDS ON ALL THE EVIDENCE THAT WILLIAM WARD DID NOT PAY THE ONE-DOLLAR INITIATION FEE AS CLAIMED BY THE UNION AND THAT THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) FILED BY THE APPLICANT IS INCORRECT AND MISLEADING.

14. THE APPLICATION WITH RESPECT TO PEARL LAUNDRY CO. LIMITED WAS MADE BY THE APPLICANT ON THE 26TH OF MARCH, 1968. ON THE SAME DATE THE APPLICANT APPLIED FOR CERTIFICATION FOR EMPLOYEES OF NEWTEX LTD. (BOARD FILE NO. 14363-67-R). IN IDENTICAL COVERING LETTERS ACCOMPANYING THE APPLICATION IN EACH CASE, THE APPLICANT

SETS OUT THE LOCATIONS OF THE PLANTS AND SERVICE CENTRES OF THE PEARL LAUNDRY CO. LIMITED AND NEWTEX LTD. AND REQUESTS THE BOARD TO FILE THE APPLICATION CARDS UNDER THE PROPER RESPONDENT, EITHER THE PEARL LAUNDRY CO. LIMITED OR NEWTEX LTD.

15. ON APRIL 2ND, 1968, THE SOLICITOR FOR THE APPLICANT WROTE TO THE BOARD WITH RESPECT TO BOTH APPLICATIONS AND ENCLOSED TWO FORMS 8'S COMPLETED BY STAN G. CLAIR, ORGANIZER FOR THE APPLICANT, TOGETHER WITH 64 APPLICATION RECEIPT FORMS. THE SECOND PARAGRAPH OF THE LETTER READS AS FOLLOWS:

"THE TWO ABOVE-CAPTIONED APPLICATIONS INVOLVE TWO COMPANIES WHOSE OPERATIONS ARE INTERWOVEN AND THE UNION'S POSITION WILL BE THAT A SINGLE CERTIFICATE SHOULD ISSUE. THE UNION HAS NO WAY OF KNOWING WHICH EMPLOYEES ARE WORKING FOR WHICH RESPONDENT AND SHOULD THE BOARD FIND THAT TWO BARGAINING UNITS ARE APPROPRIATE WOULD YOU PLEASE BE GOOD ENOUGH TO APPLY THE PROPER CARDS TO THE COMPANY WHO EMPLOYS THE RESPECTIVE EMPLOYEES."

16. BOTH CASES CAME ON FOR THE INITIAL HEARING ON APRIL 10TH, 1968, AND THE APPLICANT REQUESTED THAT BOTH CASES BE HEARD TOGETHER IN VIEW OF THE FACT THAT THE OPERATIONS AND EMPLOYEES OF THE COMPANIES WERE SO INTERMIXED THAT THE UNION, AS PREVIOUSLY ALLEGED IN THE LETTER OF APRIL 2ND, HAD NO WAY OF KNOWING WHICH EMPLOYEES WERE WORKING FOR WHICH RESPONDENT. THE UNION REQUESTED A SINGLE CERTIFICATE.

17. IT SEEMS APPARENT FROM THE FOREGOING THAT THE ORGANIZATIONAL CAMPAIGN CONDUCTED WITH RESPECT TO THE RESPONDENT, PEARL LAUNDRY CO. LIMITED, BOARD FILE NO. 14362-67-R, AND NEWTEX LTD., BOARD FILE NO. 14363-67-R, WAS ONE AND THE SAME CAMPAIGN. APART FROM ANYTHING ELSE, THE REQUEST THAT THE BOARD ALLOCATE THE CARDS TO THE PROPER RESPONDENT IS EVIDENCE OF THAT FACT.

18. SINCE THE ORGANIZATIONAL CAMPAIGN WAS CONDUCTED WITH RESPECT TO THESE TWO COMPANIES BY THE SAME UNION OFFICIALS PREVIOUSLY REFERRED TO IN THIS AWARD, THE BOARD IS FORCED TO FIND THAT ALL THE DOCUMENTARY EVIDENCE FILED WITH RESPECT TO THESE CASES IS TAINTED WITH THE FAULT ARISING OUT OF THE NON-PAYMENT OF FEES BY WARD AND THE MISLEADING STATEMENTS CONTAINED IN FORM 8, AND IS THEREFORE AS EQUALLY UNACCEPTABLE IN THE NEWTEX CASE AS IN THE PEARL LAUNDRY CASE.

19. IN VIEW OF THE FACT THAT MR. CLAIR, WHO SIGNED THE FORMS 8, AND MR. SUTTER, WHO SIGNED AS COLLECTOR, ARE BOTH PAID OFFICIALS OF THE APPLICANT, WE MUST FIND THAT THE NON-PAY IN SUCH CIRCUMSTANCES IS FATAL TO THE APPLICATION FOR CERTIFICATION WITH RESPECT TO THE EMPLOYEES OF THE RESPONDENT, PEARLY LAUNDRY CO. LIMITED, AND ALSO TO THE APPLICATION WITH RESPECT TO THE EMPLOYEES OF NEWTEX LTD.

20. THIS APPLICATION IS THEREFORE DISMISSED.

14602-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. NIAGARA DISTRICT BOARD OF EDUCATION (RESPONDENT) V. EMPLOYEE (OBJECTOR).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: A. RISELEY, J. BEATTIE, AND S. MURRAY
FOR THE APPLICANT; A. BRUCE CAMERON AND L. ALEX H. SWANSON FOR THE
RESPONDENT; AND NO ONE FOR THE EMPLOYEE.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER
J. E. C. ROBINSON: AUGUST 19, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT
IN NIAGARA TOWN AND TOWNSHIP ENGAGED IN MAINTENANCE, SERVICES, AND
PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK
OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE
THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPON-
DENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT
AT NIAGARA TOWN AND TOWNSHIP REGULARLY EMPLOYED FOR NOT MORE THAN
TWENTY-FOUR HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE
THE RANK OF SUPERVISOR, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPON-
DENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE
EXAMINER HEREIN, THE MAJORITY OF THE BOARD FINDS THAT ABRAM BORNN EXER-
CISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF
THE LABOUR RELATIONS ACT AND IS EXCLUDED FROM THE BARGAINING UNITS SET
OUT ABOVE.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE
BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE
RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 3, AT THE
TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY
22ND, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE
WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR
RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBER-
SHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE
BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE
RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 4 AT THE
TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON MAY
22ND, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE
WHICH THE BOARD DETERMINES UNDER SECTION 77(2)(J) OF THE LABOUR
RELATIONS ACT TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBER-
SHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. CERTIFICATES WILL ISSUE TO THE APPLICANT.

PARTIAL DISSENT OF BOARD MEMBER OLIVER HODGES: August 19, 1968.

1. CONSIDERING ALL THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT I FIND ABRAM BORNN IS PRIMARILY ENGAGED AS A LEAD-HAND BUS DRIVER AND VEHICLE MAINTENANCEMAN AND WOULD THEREFORE FIND HIM TO BE IN THE BARGAINING UNIT. I DO NOT CONSIDER THE MINIMAL MANAGEMENT FUNCTIONS HE PERFORMS IN THIS SMALL UNIT TO BE OF SUFFICIENT IMPORTANCE TO EXCLUDE HIM FROM THE BARGAINING UNIT.

2. IN ALL OTHER MATTERS I CONCUR IN THE DECISION OF THE MAJORITY OF THE BOARD HEREIN.

14698-68-R: UNITED PACKINGHOUSE, FOOD AND ALLIED WORKERS (APPLICANT) V. THE PYRAMID CANNERS LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFFE.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFFE: August 21, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT LEAMINGTON, SAVE AND EXCEPT FOREMEN, FLOORLADIES, QUALITY CONTROL SUPERVISORS, PERSONS ABOVE THE RANK OF FOREMAN, FLOORLADY, QUALITY CONTROL SUPERVISOR, OFFICE AND SALES STAFF, SEASONAL EMPLOYEES, FIELD-MEN, NURSES AND STATIONARY ENGINEERS AND PERSONS ENGAGED PRIMARILY AS THEIR HELPERS COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT LABORATORY AND QUALITY CONTROL STAFF ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

5. HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT, THE BOARD DECLARES THAT WHILE O. IACOBELLI AND M. MCRAE HAVE CERTAIN INCIDENTAL SUPERVISORY FUNCTIONS, THE BOARD FINDS THAT THEY DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. THE BOARD FURTHER DECLARES THAT H. PENNER EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. IN ARRIVING AT THESE FINDINGS, THE BOARD HAS APPLIED THE

CRITERIA SET FORTH IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B., MONTHLY REPORT, SEPTEMBER, 1966 AT P. 379.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 13TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2) (J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY: AUGUST 21, 1968.

I DISSENT.

I WOULD HAVE EXCLUDED O. IACOBELLI AND M. MCRAE FROM THE BARGAINING UNIT BECAUSE IN MY OPINION THEY EXERCISE MANAGERIAL FUNCTIONS.

IN MY OPINION THE EVIDENCE SHOWED THAT BOTH THESE EMPLOYEES CAN EFFECTIVELY RECOMMEND HIRING AND DISMISSAL. THEY CAN AND DO EFFECTIVELY RECOMMEND WAGE ADJUSTMENTS FOR EMPLOYEES UNDER THEIR SUPERVISION. THEY ALSO GRANT TIME OFF (FOR SHORT PERIODS) TO EMPLOYEES UNDER THEIR SUPERVISION WITHOUT CONSULTATION WITH HIGHER MANAGEMENT.

FOR THESE REASONS I WOULD HAVE EXCLUDED THESE TWO PERSONS FROM THE BARGAINING UNIT.

IN ALL OTHER MATTERS I CONCUR IN THE DECISION OF THE MAJORITY OF THE BOARD HEREIN.

14856-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) v. KILMER VAN NOSTRAND CO. LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: H. A. HERRON FOR THE APPLICANT, W. S. COOK, E. FORD AND B. ORTMAN FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 13, 1968.

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2. THE APPLICANT IS APPLYING TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT IN BOARD GEOGRAPHIC

AREA No. 8 ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

3. IT WAS AGREED BY THE PARTIES THAT THE EMPLOYEES OF THE RESPONDENT IN ITS FIELD OPERATIONS, THAT IS, THOSE ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT ARE ALREADY COVERED BY A CURRENT COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANT AND THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION.

4. THE RESPONDENT HAS TWO GARAGES AT ITS PREMISES ON WILSON AVENUE IN METROPOLITAN TORONTO. THE NORTH GARAGE IS USED PRIMARILY FOR THE REPAIR AND SERVICING OF THE RESPONDENT'S HEAVY CONSTRUCTION EQUIPMENT. THE SOUTH GARAGE IS USED PRIMARILY FOR THE REPAIR AND SERVICING OF THE RESPONDENT'S READY MIX EQUIPMENT. THE RESPONDENT SUBMITS THAT A UNIT COMPOSED OF ALL OF THE EMPLOYEES OF THE RESPONDENT AT ITS PREMISES ON WILSON AVENUE, WHICH WOULD INCLUDE BOTH THE NORTH AND SOUTH GARAGE, IS THE APPROPRIATE BARGAINING UNIT. THE APPLICANT, HOWEVER, IS NOT SEEKING CERTIFICATION FOR THE EMPLOYEES WORKING IN THE SOUTH GARAGE.

5. WHILE THE APPLICANT IS APPLYING FOR CERTIFICATION FOR THE EMPLOYEES OF THE RESPONDENT WORKING IN ITS NORTH GARAGE, AT THE SAME TIME THE APPLICANT SUBMITS THESE EMPLOYEES FALL WITHIN THE SCOPE OF ITS COLLECTIVE AGREEMENT WITH THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION. THE RESPONDENT, ON THE OTHER HAND, SUBMITS THAT THE EMPLOYEES IN THE NORTH GARAGE ARE NOT COVERED BY THE AGREEMENT.

6. IN OUR VIEW, WHETHER OR NOT THE EMPLOYEES WORKING IN THE NORTH GARAGE FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ARE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION DEPENDS ON THE INTERPRETATION THAT IS PLACED UPON THE PROVISIONS RELATING TO THE SCOPE OF THE AGREEMENT. THIS IS A MATTER WHICH PROPERLY SHOULD BE DETERMINED UNDER THE GRIEVANCE AND ARBITRATION PROCEDURES OF THE COLLECTIVE AGREEMENT. ACCORDINGLY, UNTIL SUCH TIME AS THIS ISSUE IS DETERMINED BY THESE PROCEDURES, ANY APPLICATION FOR CERTIFICATION BY THE APPLICANT IS PREMATURE. WE WOULD ADD THAT THE REPRESENTATIVE OF THE APPLICANT ADVISED THE BOARD THAT THE APPLICANT HAD INSTITUTED A GRIEVANCE WITH RESPECT TO THE STATUS UNDER THE COLLECTIVE AGREEMENT OF THE EMPLOYEES FOR WHOM IT IS SEEKING CERTIFICATION.

7. WE WOULD POINT OUT THAT IN A PREVIOUS APPLICATION FOR CERTIFICATION BY ANOTHER TRADE UNION WHICH WAS ULTIMATELY DISMISSED FOLLOWING THE TAKING OF A REPRESENTATION VOTE (BOARD FILE No. 12781-66-R) THE BOARD FOUND THAT ALL EMPLOYEES OF THE PRESENT RESPONDENT EMPLOYED AT ITS PREMISES ON WILSON AVENUE IN METROPOLITAN

TORONTO CONSTITUTED AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING. IN ORDER TO DETERMINE WHO WERE INCLUDED IN THAT UNIT AND WHO WERE ALREADY REPRESENTED BY THE PRESENT APPLICANT, HOWEVER, IT WAS NECESSARY FOR THE BOARD TO INTERPRET THE SCOPE OF A COLLECTIVE AGREEMENT BETWEEN THE METROPOLITAN TORONTO ROAD BUILDERS' ASSOCIATION AND A COUNCIL OF TRADE UNIONS, WHICH WAS BINDING ON THE PRESENT APPLICANT.

8. THE CIRCUMSTANCES OF THE INSTANT CASE ARE QUITE DIFFERENT. HERE THE APPLICANT, IN FACT, IS NOT SEEKING CERTIFICATION FOR A UNIT OF EMPLOYEES NOT ALREADY REPRESENTED BY A BARGAINING AGENT. RATHER THE APPLICANT IS SEEKING CLARIFICATION OF THE SCOPE OF ITS COLLECTIVE AGREEMENT WITH THE METROPOLITAN ROAD BUILDERS' ASSOCIATION. AS WE HAVE ALREADY STATED, THE APPLICANT'S REMEDY IS BY WAY OF THE GRIEVANCE AND ARBITRATION PROCEDURES OF THE COLLECTIVE AGREEMENT.

9. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

14740-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) v. W.N. CONSTRUCTION (OTTAWA) LTD. (RESPONDENT) v. CANADIAN CONSTRUCTION WORKERS' UNION, DIV. NO. 1, N.C.C.L. (INTERVENER).

- AND -

14750-68-R: CANADIAN CONSTRUCTION WORKERS' UNION, DIV. NO. 1, N.C.C.L. (APPLICANT) v. W.N. CONSTRUCTION (OTTAWA) LTD. (RESPONDENT) v. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (INTERVENER) v. LOCAL NO. 7, ONTARIO BRICKLAYERS, MASONS AND PLASTERERS I.U. OF AMERICA (INTERVENER) v. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. C. BUTLER, Q.C., FOR CANADIAN CONSTRUCTION WORKERS' UNION, DIV. NO. 1, N.C.C.L., D. L. MCWILLIAM AND H. C. DAY FOR THE RESPONDENT, R. KOSKIE, F. MANONI, A.J. VERAEEKE AND L. SAWYER FOR LABOURERS LOCAL 527, BRICKLAYERS LOCAL 7 AND CARPENTERS LOCAL 93.

DECISION OF THE BOARD: AUGUST 29, 1968.

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2. THE BOARD FINDS THAT THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (HEREINAFTER REFERRED TO AS LABOURERS LOCAL 527) IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FINDS THAT THE CANADIAN CONSTRUCTION WORKERS' UNION, DIV. No. 1, N.C.C.L. (HEREINAFTER REFERRED TO AS CANADIAN UNION No. 1) IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

4. THE LABOURERS LOCAL 527 AND THE CANADIAN UNION No. 1 ARE BOTH APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT.

5. THE LABOURERS LOCAL 527 AND THE INTERVENING BRICKLAYERS, LOCAL No. 7 AND CARPENTERS, LOCAL No. 93 FILED CHARGES ALLEGING ASSISTANCE ON THE PART OF MEMBERS OF MANAGEMENT OF THE RESPONDENT IN THE SECURING OF THE EVIDENCE OF MEMBERSHIP WHICH WAS FILED IN SUPPORT OF THE APPLICATION FOR CERTIFICATION OF THE CANADIAN UNION No. 1. THE BOARD ACCORDINGLY LISTED THIS MATTER FOR HEARING TO PERMIT THE PARTIES TO ADDUCE EVIDENCE AND TO MAKE REPRESENTATIONS WITH RESPECT TO ALL MATTERS RELATING TO THE CHARGES AND ALL OTHER OUTSTANDING ISSUES.

6. PIETRO FOTI, WHO IS A BRICKLAYER IN THE EMPLOY OF THE RESPONDENT, TESTIFIED THAT DURING THE MONTH OF JUNE HE WAS WORKING ON THE RESPONDENT'S ST. MARK'S SCHOOL PROJECT IN OTTAWA TOGETHER WITH OTHER BRICKLAYERS AND LABOURERS UNDER THE DIRECTION OF GIOVANNI SAVONE. FOTI TESTIFIED THAT SAVONE SPOKE TO HIM AND THE OTHER BRICKLAYERS AND LABOURERS ON THE JOB DURING A LUNCH BREAK ABOUT JOINING THE UNION. ACCORDING TO FOTI, SAVONE REFERRED TO BOTH OF THE ABOVE NAMED UNIONS AND SAID THAT IT WAS CHEAPER TO JOIN THE CANADIAN UNION No. 1. FOTI'S EVIDENCE IS THAT THE FOLLOWING MORNING JUST PRIOR TO THE COMMENCEMENT OF WORK, SAVONE PRESENTED THE BRICKLAYERS AND LABOURERS ON THE JOB WITH APPLICATIONS FOR MEMBERSHIP IN THE CANADIAN UNION No. 1 AND TOLD THEM THAT THEY HAD TO JOIN THAT UNION. FOTI'S EVIDENCE IS THAT SAVONE COMPLETED THE APPLICATION FOR MEMBERSHIP CARDS AND THAT EACH OF THE BRICKLAYERS AND LABOURERS ON THE JOB SIGNED THE APPLICATIONS AND PAID \$1.00 TO SAVONE.

7. AT THAT POINT IN THE PROCEEDINGS, THE CHAIRMAN NOTED THAT SAVONE WAS NOT SHOWN AS THE COLLECTOR OF THE \$1.00 INITIATION FEE ON ANY OF THE CARDS SUBMITTED BY THE CANADIAN UNION No. 1. RATHER, W. PLUSKOTA WAS SHOWN AS THE SIGNATURE OF THE ACTUAL COLLECTOR OF THE \$1.00 ON EVERY CARD EXCEPT HIS OWN. WITH RESPECT TO HIS OWN CARD, CLIVE THOMAS, THE GENERAL BUSINESS AGENT OF THE CANADIAN UNION No. 1, WAS SHOWN AS THE ACTUAL COLLECTOR. THOMAS, WHO COMPLETED THE FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, STATED THAT HE HAD MADE INQUIRES OF PLUSKOTA BUT HAD NOT BEEN ADVISED THAT SAVONE WAS THE ACTUAL COLLECTOR OF THE INITIATION FEES FOR SOME OF THE APPLICATIONS FOR MEMBERSHIP.

8. IN LIGHT OF THE DISCREPANCIES BETWEEN INFORMATION CONTAINED ON THE APPLICATION FOR MEMBERSHIP CARDS, THE EVIDENCE OF FOTI AND THE FORM 54, THE BOARD DECIDED AT THAT STAGE TO MAKE ITS OWN INQUIRY WITH RESPECT TO THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE CANADIAN UNION No. 1. WALTER PLUSKOTA ACCORDINGLY WAS CALLED BY THE BOARD TO TESTIFY AS TO HIS ROLE IN THE SECURING OF THE EVIDENCE OF MEMBERSHIP FILED BY THE CANADIAN UNION No. 1.

9. PLUSKOTA TESTIFIED THAT HE GAVE APPROXIMATELY ONE DOZEN APPLICATION FOR MEMBERSHIP CARDS TO SAVONE AND INSTRUCTED HIM TO SIGN UP THE BRICKLAYERS AND LABOURERS ON THE ST. MARK'S SCHOOL PROJECT AND COLLECT THE \$1.00 INITIATION FEE FROM THEM AND RETURN THE CARDS AND THE MONEY TO HIM. PLUSKOTA IDENTIFIED THIRTEEN APPLICATIONS FOR MEMBERSHIP WHICH, TO THE BEST OF HIS RECOLLECTION, HAD BEEN GIVEN TO HIM BY SAVONE TOGETHER WITH THE ACCOMPANYING \$1.00 INITIATION FEE FOR EACH CARD. PLUSKOTA ADMITTED THAT HE PLACED HIS SIGNATURE ON THE APPLICATIONS FOR MEMBERSHIP AS THE ACTUAL COLLECTOR. PLUSKOTA TESTIFIED, HOWEVER, THAT HE DID NOT RECALL THOMAS ASKING HIM ANY QUESTIONS CONCERNING THE APPLICATION FOR MEMBERSHIP CARDS OR THE PAYMENT OF THE INITIATION FEES AT THE TIME THAT HE GAVE THE CARDS AND FEES TO THOMAS. ALTHOUGH GIVEN AN OPPORTUNITY TO DO SO, COUNSEL FOR THE CANADIAN UNION No. 1 CALLED NO EVIDENCE AS TO THE INSTRUCTIONS THAT THOMAS GAVE TO PLUSKOTA IN SIGNING UP EMPLOYEES OF THE RESPONDENT INTO MEMBERSHIP OR THE EXACT NATURE OF THE INQUIRIES, IF ANY, THAT THOMAS MADE OF PLUSKOTA.

10. SAVONE, WHO WAS ALSO CALLED AS A WITNESS BY THE BOARD, TESTIFIED THAT PLUSKOTA HAD GIVEN HIM A NUMBER OF APPLICATION FOR MEMBERSHIP CARDS FOR THE CANADIAN UNION No. 1 AND HAD INSTRUCTED HIM TO SIGN UP THE BRICKLAYERS AND LABOURERS ON THE ST. MARK'S SCHOOL PROJECT AND TO COLLECT THE \$1.00 INITIATION FEE. SAVONE TESTIFIED THAT NO ONE TOLD HIM THAT HE HAD TO SIGN AS THE COLLECTOR ON THE MEMBERSHIP CARDS. HIS EVIDENCE IS THAT HE HAD NO CONVERSATION CONCERNING THE EVIDENCE OF MEMBERSHIP WITH THOMAS. SAVONE IDENTIFIED TWELVE OF THE APPLICATION FOR MEMBERSHIP CARDS WHICH HE HAD SIGNED UP ON BEHALF OF THE CANADIAN UNION No. 1. WITH TWO EXCEPTIONS THEY MATCHED THOSE WHICH PLUSKOTA HAD IDENTIFIED AS BEING THE APPLICATIONS SIGNED UP BY SAVONE.

11. PARAGRAPH 3 OF FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY, READS, IN PART, AS FOLLOWS:

ON THE BASIS OF MY PERSONAL KNOWLEDGE AND INQUIRIES THAT I HAVE MADE, I STATE THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECTED THE MONEYS PAID ON ACCOUNT OF DUES OR INITIATION FEES AND THAT EACH MEMBER, ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS COLLECTOR, EXCEPT IN THE FOLLOWING INSTANCES:

OPPOSITE THE WORDS "EXCEPT IN THE FOLLOWING INSTANCES" IS INSERTED THE WORD "NIL".

12. THERE IS A CONFLICT BETWEEN THE STATEMENT MADE BY THOMAS THAT HE HAD MADE INQUIRES OF PLUSKOTA AND THE EVIDENCE OF PLUSKOTA THAT THOMAS, IN FACT, HAD MADE NO INQUIRIES OF HIM. EVEN ASSUMING THAT THOMAS DID MAKE INQUIRES OF PLUSKOTA, THE EVIDENCE LEADS US TO CONCLUDE THAT THEY MUST HAVE BEEN TOTALLY INADEQUATE SINCE PLUSKOTA COULD NOT EVEN RECALL ANY INQUIRIES AS TO WHO COLLECTED THE INITIATION FEES HAVING BEEN MADE OF HIM. IN SHORT, WE ARE NOT SATISFIED THAT THOMAS MADE SUCH INQUIRIES AS WOULD REVEAL THE FACT THAT SAVONE WAS THE COLLECTOR OF THE INITIATION FEES FOR APPROXIMATELY ONE-HALF OF THE APPLICATIONS FILED IN SUPPORT OF THE APPLICATION FOR CERTIFICATION OF THE CANADIAN UNION No. 1. FURTHER, SAVONE'S CLAIM THAT HE WAS NEVER INSTRUCTED TO SIGN THE APPLICATION FORMS AS COLLECTOR WOULD INDICATE THAT EITHER THOMAS DID NOT PROPERLY INSTRUCT PLUSKOTA OR THAT PLUSKOTA, IN TURN, DID NOT PROPERLY INSTRUCT SAVONE AS TO THE BOARD'S REQUIREMENTS WITH RESPECT TO EVIDENCE OF MEMBERSHIP.

13. THE BOARD'S POLICY WITH REGARD TO THE STANDARDS OF MEMBERSHIP WHICH AN APPLICANT IS REQUIRED TO MEET IS REVIEWED IN THE COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING & ENGINEERING LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1967, P. 246. IN THAT CASE, THE BOARD CITED THE VALLEY TRANSPORTATION COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1963, P. 448. WITH RESPECT TO THE BOARD'S REQUIREMENT FOR FULL DISCLOSURE, THE LATTER DECISION READS, IN PART, AT PAGE 451:

IT NEED HARDLY BE POINTED OUT, THAT IT WOULD BE IMPOSSIBLE FOR THE BOARD TO INTERVIEW EACH AND EVERY EMPLOYEES IN RESPECT OF WHOM EVIDENCE OF MEMBERSHIP IS FILED IN APPLICATIONS FOR CERTIFICATION. FURTHER, WHETHER A PERSON IS OR IS NOT A MEMBER OF A TRADE UNION OR DOES OR DOES NOT DESIRE TO BE REPRESENTED BY A TRADE UNION ARE, EXCEPT IN THE SPECIAL CIRCUMSTANCES WHERE THE BOARD CONSENTS TO THEIR DISCLOSURE, MATTERS WHICH ARE PROTECTED FROM DISCLOSURE BY THE PROVISIONS OF SECTION 83 OF THE ACT. BY THE VERY NATURE OF THINGS, THEREFORE, THE BOARD MUST RELY HEAVILY AND ALMOST ENTIRELY ON DOCUMENTARY EVIDENCE WHEN CONSIDERING THE FACTS RELIED ON AS CONSTITUTING PROOF OF THE UNION'S MEMBERSHIP. AS THE DOCUMENTS SUBMITTED AS EVIDENCE OF MEMBERSHIP ARE NOT SUBJECT TO ANY EXAMINATION BY THE OTHER PARTIES TO THE PROCEEDINGS, THE BOARD MUST BE MOST CIRCUMSPECT AND METICULOUS IN ITS EXAMINATION AND ACCEPTANCE OF THEM. THE BOARD MUST EXPECT AND INSIST THAT PERSONS WHO FILE APPLICATIONS FOR MEMBERSHIP CARDS AND RECEIPTS AND FORM 9 AS EVIDENCE OF MEMBERSHIP, TAKE ALL NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED THEREIN IS TRUE AND ACCURATE. THE BOARD IS ENTITLED TO DEMAND THE HIGHEST STANDARDS OF INTEGRITY, DISCLOSURE, AND ACCURACY ON THE PART OF THOSE WHO SUBMIT SUCH EVIDENCE AND WHERE UNDISCLOSED INACCURACIES OF

MATERIAL FACTS ARE LATER BROUGHT TO ITS ATTENTION, TO TAKE A STRICT VIEW OF THEM. AS WAS SAID BY THE BOARD IN THE WEBSTER AIR EQUIPMENT COMPANY LTD. CASE, C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER 1955-59, ¶16,110, AT P. 12,204,

ANY ATTEMPT TO MISLEAD THE BOARD OR ANY FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS MUST WEIGHT HEAVILY AGAINST AN APPLICANT.

14. IN THE COLLINGWOOD SHIPYARDS CASE, SUPRA, THE BOARD EMPHASIZED THE IMPORTANCE OF FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS. (FORM 54 IS THE CORRESPONDING FORM FOR THE CONSTRUCTION INDUSTRY). WE WOULD QUOTE THE FOLLOWING PASSAGE FROM THAT DECISION AT P. 253:

NOW THERE IS ANOTHER MATTER IN CONNECTION WITH THE FILING OF FORM 8 WHICH MUST NOT BE OVERLOOKED AND THAT IS THE FACT THAT THE PERSON COMPLETING THE FORM HAS A DUTY TO INFORM HIMSELF OF THE FACTS SO AS TO BE SATISFIED THAT THERE ARE NO IRREGULARITIES WHICH OUGHT TO BE DISCLOSED. IN MANY CASES THAT PERSON WILL NOT HAVE PERSONAL KNOWLEDGE OF THE FACTS CONCERNING THE ORGANIZING CAMPAIGN AND SO IT IS INCUMBENT ON HIM TO MAKE INQUIRIES IN ORDER TO COMPLETE THE FORM. FAILURE ON HIS PART, OR ON THE PART OF THOSE PERSONS UNDER HIM RESPONSIBLE FOR DIRECTING THE CAMPAIGN, TO MAKE THE NECESSARY INQUIRIES HAS HAD SERIOUS REPERCUSSIONS FOR AN APPLICANT TRADE UNION. SEE, FOR EXAMPLE, THE NATIONAL STEEL CAR CORPORATION LIMITED CASE, SUPRA. THAT DECISION IS PARTICULARLY SIGNIFICANT HAVING REGARD TO THE FACT THAT THE APPLICATION WAS DISMISSED BECAUSE OF A FAILURE OF RESPONSIBLE OFFICIALS OF THE APPLICANT TRADE UNION TO MAKE INQUIRIES EVEN THOUGH THERE WAS NO EVIDENCE BEFORE THE BOARD THAT ANY IRREGULARITIES IN FACT EXISTED WITH RESPECT TO THE MEMBERSHIP EVIDENCE FILED IN SUPPORT OF THE APPLICATION AND DESPITE THE FACT THAT THE BOARD HAD CONDUCTED A REPRESENTATION VOTE ALTHOUGH, ADMITTEDLY, THE BALLOTS HAD NOT BEEN COUNTED.

IT IS CLEAR, THEN, THAT A TRADE UNION, APPLYING FOR CERTIFICATION, HAS THE RESPONSIBILITY OF SATISFYING ITSELF THAT THE MATTERS DEALT WITH IN FORM 8 HAVE BEEN PROPERLY INVESTIGATED BY THE PERSON COMPLETING THAT FORM AND, FURTHER, THAT ANY EXCEPTIONS ARE DULY NOTED ON THE FORM. IT IS ALSO CLEAR, HOWEVER, THAT

RESPONSIBILITY EXTENDS BEYOND THE MATTERS ENUMERATED IN PARAGRAPH 3 OF THE FORM, THAT IS, THAT THE COLLECTOR NAMED ON THE RECEIPT OR OTHER ACKNOWLEDGMENT OF PAYMENT ACTUALLY COLLECTED THE MONEY AND THAT THE PERSON TO WHOM THE RECEIPT WAS ISSUED, AS HAVING PAID MONEY TOWARDS DUES OR INITIATION FEES, ACTUALLY PAID THE MONEY ON HIS OWN BEHALF TO THE PERSON SHOWN AS THE COLLECTOR.

15. AFTER REFERRING TO A NUMBER OF OTHER DECISIONS, THE BOARD IN THE COLLINGWOOD SHIPYARDS CASE, SUPRA, WENT ON TO STATE AT P. 255:

THE WORDS "MAY WELL WEIGH HEAVILY AGAINST AN APPLICANT" APPEAR IN MOST OF THE PASSAGES CITED FROM THOSE DECISIONS. IF ANYTHING, THE PASSAGE MAKES IT CLEAR THAT CARELESSNESS IN COMPLETING FORM 8 MAY JUSTIFY THE BOARD IN DISMISSING AN APPLICATION. FURTHER, THE CASES THEMSELVES DO NOT IN OUR VIEW STAND FOR THE DISTINCTION WHICH COUNSEL SEEKS TO MAKE. ALL MAKE IT CLEAR THAT IT IS WEIGHT, NOT ADMISSIBILITY PER SE, WHICH IS IN ISSUE. HOWEVER, IT IS THE FAILURE TO DISCLOSE WHICH AFFECTS THE WEIGHT WHICH THE BOARD MAY GIVE THE MEMBERSHIP EVIDENCE. THE WEBSTER AIR EQUIPMENT CASE IS QUITE CLEAR ON THIS POINT.

WHILE IT MAY BE TRUE THAT IN MOST OF THE CASES THE FAILURE TO DISCLOSE OF THE CARELESSNESS REFERS TO A FAILURE TO DISCLOSE "NON-PAYS" OR "NON-SIGNS", WE DO NOT ACCEPT THE PROPOSITION THAT THESE "IRREGULARITIES" ARE THE ONLY ONES WHICH "MAY WEIGH HEAVILY AGAINST AN APPLICANT" IF NOT DISCLOSED. THE WEBSTER AIR EQUIPMENT CASE SPEAKS OF "A FAILURE TO MAKE FULL DISCLOSURE OF ALL MATERIAL FACTS". IT IS SURELY NOT OPEN TO ARGUMENT THAT IF THE FORM 8, AS IT DOES, REQUIRES INSTANCES WHERE THE PERSON SIGNING AS COLLECTOR HAS NOT IN FACT RECEIVED THE MONEY TO BE DISCLOSED, THESE ARE NOT MATERIAL FACTS WITHIN THE MEANING OF THAT DECISION.

16. COUNSEL FOR THE CANADIAN UNION No. 1 SUBMITS THAT SINCE FULL DISCLOSURE OF THE TRUE SITUATION WAS BROUGHT TO LIGHT AS A RESULT OF THE BOARD'S OWN INQUIRY, THE BOARD SHOULD ACCEPT THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE CANADIAN UNION No. 1. IN REPLY TO THE ARGUMENT OF COUNSEL, WE WOULD CITE THE FOLLOWING PASSAGE FROM THE COLLINGWOOD SHIPYARDS CASE, SUPRA, AT P. 256:

HAVING REGARD TO THE EVIDENCE AND ALL THE CIRCUMSTANCES OF THIS CASE, WE ARE DRIVEN TO THE CONCLUSION THAT THE TRUE STATE OF AFFAIRS MIGHT WELL NOT HAVE COME TO OUR ATTENTION SAVE FOR THE INTERVENER'S ALLEGATIONS. WE REITERATE WE DO NOT REGARD THE DISCLOSURES ULTIMATELY MADE HERE AS DISCLOSURES WITHIN THE MEANING OF THE BOARD'S DECISIONS ON THIS POINT.

IT IS CLEAR THAT THERE IS A DUTY ON THE APPLICANT TO TAKE ALL THE NECESSARY PRECAUTIONS AND CARE TO ENSURE THAT THE INFORMATION CONTAINED IN THE EVIDENCE OF MEMBERSHIP AS WELL AS THE FORM 54 IS TRUE AND ACCURATE. IN THIS CASE NEARLY HALF THE APPLICATIONS FOR MEMBERSHIP ARE NOT TRUE AND ACCURATE, AS THE PERSON SHOWN AS THE COLLECTOR OF THE INITIATION FEE WAS, IN FACT, NOT THE COLLECTOR. IN LIGHT OF ALL THE EVIDENCE, WE FIND THAT THOMAS WAS INEXCUSABLY LAX IN NOT TAKING THOSE STEPS WHICH EASILY COULD HAVE AVOIDED THE PRESENT SITUATION. IT IS IMPORTANT TO NOTE THAT IT WAS ONLY AS A RESULT OF THE EVIDENCE OF THE FIRST WITNESS CALLED BY THE LABOURERS LOCAL 527 THAT THE FALSE INFORMATION ON THE APPLICATION FOR MEMBERSHIP CARDS AND THE MISLEADING INFORMATION CONTAINED IN THE FORM 54 CAME TO THE BOARD'S ATTENTION.

17. COUNSEL FOR THE CANADIAN UNION No. 1 FURTHER SUBMITS THAT THE INACCURACIES IN THE APPLICATIONS FOR MEMBERSHIP ARE MERELY TECHNICAL ERRORS WHICH SHOULD NOT PROMPT THE BOARD TO GIVE NO WEIGHT TO THE EVIDENCE OF MEMBERSHIP. IT IS OUR VIEW, HOWEVER, THAT THE SITUATION REVEALED HERE FALLS SQUARELY WITHIN THE PRINCIPLES LAID DOWN IN THE DECISIONS WHICH WE HAVE REFERRED TO. ADMITTEDLY THE RESULT MAY SEEM HARSH TO AN APPLICANT. HOWEVER, AS THE CASES SHOW, THE BOARD'S DEPENDENCE ON THE TRUTH AND ACCURACY OF THE DOCUMENTARY EVIDENCE OF MEMBERSHIP, INCLUDING THE FORM 54, FILED BY AN APPLICANT CARRIES WITH IT A CORRESPONDING OBLIGATION ON THE PART OF SUCH APPLICANT TO ENSURE THAT THE EVIDENCE SUBMITTED IS TRUE AND ACCURATE AND DOES NOT MISLEAD THE BOARD. THERE HAS BEEN A CLEAR BREACH OF THAT OBLIGATION IN THIS CASE. IN ALL THE CIRCUMSTANCES, WE ARE NOT PREPARED TO PLACE ANY RELIANCE ON THE EVIDENCE OF MEMBERSHIP FILED BY CANADIAN UNION No. 1.

18. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF CANADIAN CONSTRUCTION WORKERS' UNION, Div. No. 1, N.C.C.L., ON JUNE 26TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

19. THE APPLICATION OF THE CANADIAN CONSTRUCTION WORKERS' UNION, Div. No. 1, N.C.C.L., ACCORDINGLY IS DISMISSED.

20. DEALING NOW WITH THE APPLICATION OF THE LABOURERS LOCAL 527, THE BOARD FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

21. IN VIEW OF THE FACT THAT THE BOARD HAS DISMISSED THE APPLICATION OF THE CANADIAN UNION No. 1, IT IS NOT NECESSARY FOR THE BOARD TO DEAL WITH THE REPORT OF THE EXAMINER DATED JULY 18TH, 1968 AND TO MAKE A DETERMINATION WITH REGARD TO THE EMPLOYMENT STATUS OF GIOVANNI SAVONE. HE IS CLASSIFIED AS A BRICKLAYER AND THEREFORE OBVIOUSLY CANNOT BE IN THE UNIT FOUND TO BE APPROPRIATE FOR COLLECTIVE BARGAINING.

22. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527, ON JUNE 24TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

23. A CERTIFICATE WILL ISSUE TO THE LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527.

INDEXED ENDORSEMENT - PROSECUTION

14817-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (APPLICANT) V. POWELL AGRI-SYSTEMS LIMITED, FRANK GELINAS JOSEPH VAN BOMELL, AND ROBERT WILSON (RESPONDENTS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: J. B. WATERMAN, E. DONNE FOR THE APPLICANT AND E. HOREMBALA, N.F. WHITE FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER P. J. O'KEEFFE:

AUGUST 19, 1968.

1. THE APPLICANT IS APPLYING TO THE BOARD FOR CONSENT TO INSTITUTE A PROSECUTION AGAINST THE RESPONDENT COMPANY FOR REFUSING TO CONTINUE TO EMPLOY A PERSON BECAUSE HE WAS A MEMBER OF THE APPLICANT CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT; AGAINST THE RESPONDENTS FOR INTERFERING WITH THE SELECTION OF A TRADE UNION OR THE REPRESENTATION OF THE EMPLOYEES OF THE RESPONDENT COMPANY BY A TRADE UNION CONTRARY TO SECTION 48 OF THE ACT AND FOR DISCRIMINATION AGAINST A CERTAIN PERSON IN REGARD TO HIS EMPLOYMENT BECAUSE HE WAS A MEMBER OF THE APPLICANT OR WAS EXERCISING OTHER RIGHTS UNDER THE LABOUR RELATIONS ACT CONTRARY TO SECTION 50(A) OF THE ACT.

2. HAVING CONSIDERED ALL OF THE EVIDENCE PRESENTED TO THE BOARD IN THIS MATTER AS WELL AS THE REPRESENTATIONS OF THE PARTIES, THE BOARD,

(A) DISMISSES THE APPLICATION AS IT RELATES TO THE ALLEGED CONTRAVENTION OF SECTION 50(A) BY ROBERT WILSON;

(B) DISMISSES THE APPLICATION AS IT RELATES TO THE ALLEGED CONTRAVENTION OF SECTION 48 BY FRANK GELINAS;

(C) CONSENTS TO THE INSTITUTION OF A PROSECUTION AGAINST THE RESPONDENTS NAMED BELOW FOR THE FOLLOWING OFFENCES ALLEGED TO HAVE BEEN COMMITTED:

(I) THAT THE RESPONDENTS POWELL AGRI-SYSTEMS LIMITED, JOSEPH VAN BOMELL AND ROBERT WILSON INTERFERED WITH THE SELECTION OF A TRADE UNION OR THE REPRESENTATION OF THE EMPLOYEES OF POWELL AGRI-SYSTEMS LIMITED BY A TRADE UNION CONTRARY TO SECTION 48 OF THE LABOUR RELATIONS ACT;

(II) THAT THE RESPONDENTS POWELL AGRI-SYSTEMS LIMITED, FRANK GELINAS, JOSEPH VAN BOMELL DISCRIMINATED AGAINST DAVID DOUGLAS IN REGARD TO HIS EMPLOYMENT BECAUSE HE WAS A MEMBER OF THE APPLICANT OR WAS EXERCISING OTHER RIGHTS UNDER THE LABOUR RELATIONS ACT CONTRARY TO SECTION 50(A) OF THE ACT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON:

AUGUST 19, 1968.

I WOULD NOT HAVE GIVEN MY CONSENT TO THE INSTITUTION OF A PROSECUTION BY THIS BOARD AGAINST THE RESPONDENT, JOSEPH VAN BOMELL. EVEN THOUGH THE BOARD IN APPLICATIONS FOR CONSENT TO PROSECUTE IS NOT CALLED UPON TO DETERMINE WHETHER THE EVIDENCE IS SUFFICIENTLY CONCLUSIVE TO WARRANT THE CONVICTION OF THE RESPONDENTS, OR ANY OF THEM, BUT ONLY WHETHER THE APPLICANT HAS ESTABLISHED A PRIMA FACIE CASE, I WOULD FIND THAT ON THE EVIDENCE BEFORE ME THE APPLICANT HAS FAILED TO ESTABLISH EVEN A PRIMA FACIE CASE AGAINST THE RESPONDENT JOSEPH VAN BOMELL.

ACCORDINGLY, I WOULD DISMISS THE APPLICATION AS AGAINST HIM.

INDEXED ENDORSEMENTS - SECTION 65

14148-67-U: UNITED PACKINGHOUSE FOOD AND ALLIED WORKERS AFL-CIO
(COMPLAINANT) V. MULLER'S MEATS LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS J.E.C. ROBINSON AND O. HODGES.

APPEARANCES AT THE HEARING: T. ARMSTRONG, C. BORSK, L. PYSHER FOR THE APPLICANT AND LORNE MORPHY, ROBERT ARMSTRONG, HENRY MULLER, DAVID HAGARTY FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: AUGUST 28, 1968.

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSONS HENRI OLEJNIK, ANDRAS BOGNAR, SANDRA PATTERSON, JOSEPH PAUL TARENT, MARTIN EDWARD CASCARELLA, WALTER LYLE PYSHER, ROBERT CANPION, GABRIELLE MALONEY, KATHLEEN CORMIER, RUSSELL J. CAIL, LINDA MENZIES, WARREN AUBIE, WILHELM GOETZ AND GILL BELFLEUR WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 50 AND 52 OF THE LABOUR RELATIONS ACT AND REQUESTS THAT THEY BE REIN- STATED TO EMPLOYMENT WITH THE RESPONDENT WITH FULL COMPENSATION FROM THE DATE OF THEIR TERMINATION TO THE DATE OF THEIR REINSTATEMENT. THE RES- PONDENT DENIES THE COMPLAINT WITH RESPECT TO EACH OF THE AGGRIEVED PERSONS NAMED IN THE APPLICATION.

2. IN SUPPORT OF THE APPLICATION THE COMPLAINANT LED CERTAIN EVIDENCE WHICH IS SET OUT IN PART BELOW. MR. LYLE PYSHER, EMPLOYED BY THE RESPONDENT AS A TRUCK DRIVER FOR ABOUT THREE YEARS TESTIFIED THAT HE BECAME INVOLVED WITH THE COMPLAINANT UNION ON THURSDAY, FEB- RUARY 8TH, 1968, WHEN HE WAS ASKED TO ATTEND A MEETING WITH REPRE- SENTATIVES OF THE UNION ON FRIDAY. AT THAT MEETING ARRANGEMENTS WERE MADE TO HOLD A MEETING THE NEXT DAY, SATURDAY, FEBRUARY 10TH, 1968, FOR THE RESPONDENT'S EMPLOYEES TO TALK OVER UNION MATTERS. HE SPOKE TO A FEW EMPLOYEES ON SATURDAY MORNING AND ADVISED THEM OF THE MEET- ING THAT AFTERNOON. THE PLANT WAS OPERATING UNTIL NOON THAT SATURDAY, AS IT NORMALLY DID, AND HE SAID, THAT BOTH HENRY MULLER AND MR. MULLER SR. WERE IN THE PLANT DURING THAT TIME. AFTER 12:00 P.M., 14 EMPLOYEES OF THE RESPONDENT ATTENDED A MEETING HELD AT THE PARK MOTOR HOTEL IN NIAGARA FALLS, WHERE ALL OF THEM SIGNED AN APPLICATION FOR MEMBERSHIP IN THE COMPLAINANT UNION. ON SUNDAY, FEBRUARY 11TH, 1968, HE RECEIVED A LETTER FROM THE RESPONDENT SIGNED ON ITS BEHALF BY FERDINAND MULLER WHICH WAS DELIVERED TO HIS HOME AT ABOUT 9:00 P.M. ADVISING HIM OF HIS LAY OFF. HE HAD NO DISCUSSION WITH MR. MULLER ON THE SATURDAY BEFORE THE LAY OFF. FOLLOWING THE LAY OFF, MR. MULLER REQUESTED HIM TO RETURN TO WORK ON FEBRUARY 19TH AND AFTER ADVISING MULLER THAT HE WOULD BE IN ON THE FOLLOWING MONDAY AFTERNOON, HE THEN REFUSED TO GO BACK TO WORK UNTIL THE WHOLE MATTER CONCERNING THE LAY OFF WAS SETTLED. BY LETTER DATED FEBRUARY 20TH, THE RESPONDENT THEN TERMINATED HIS EMPLOYMENT. HE STATED THAT THE POLICY OF THE COMPANY TO DISMISS EMPLOYEES IF THEY FAIL TO SHOW UP FOR WORK WAS POSTED ON THE DAY THAT THE UNION MEETING WAS HELD. PYSHER FURTHER TESTIFIED THAT THE RESPONDENT HAD MOVED TO A NEW PLANT IN JANUARY 1968 WHICH WAS MORE MODERN AND EFFICIENT THAN THE OLD PLANT AND HE OPERATED A FORK LIFT TRUCK WITH PALLETS FOR STORAGE PUR- POSES WHICH WAS A NEW ARRANGEMENT SINCE MOVING. AS WELL, THE RESPONDENT HAD INSTALLED AN AUTOMATIC BONING TABLE. THE NEW PLANT HAD MORE STORAGE SPACE THAN THE OLD PLANT AND HE SAID THAT THE FREEZERS WERE NOT FILLED TO THE DOOR BUT THERE WAS MORE MEAT GOING IN THAN GOING OUT.

3. MR. STEWART LOWRY TESTIFIED THAT HE HAD BEEN EMPLOYED AS A FOREMAN WITH THE RESPONDENT FOR ABOUT 14 YEARS IN ITS RESTAURANT DIVISION. HE BECAME AWARE OF THE UNION ON THE MORNING OF SATURDAY, FEBRUARY 10TH AND ATTENDED A MEETING HELD THAT AFTERNOON AT THE PARK MOTOR HOTEL. HE SIGNED A MEMBERSHIP CARD AND PAID THE SUM OF \$1.00. AT ABOUT 6:00 P.M. THAT DAY HE RECEIVED A TELEPHONE CALL FROM MR. HENRY MULLER WHO ASKED HIM TO GO TO THE PLANT. THIS HE DID AND THEN MULLER ASKED HIM IF HE HAD HEARD ABOUT A UNION TO WHICH HE REPLIED THAT HE HAD AND HE SHOWED MULLER HIS CARD. THERE WAS NO DISCUSSION AT THAT TIME ABOUT THE UNION MEETING OR ABOUT ANY OTHER EMPLOYEES. MR. LOWRY WAS NOT INCLUDED IN THE LAY OFF AND HAS BEEN WORKING WITH THE RESPONDENT SINCE THE DATE OF THE LAY OFF. HE SAID THAT IN JANUARY AND FEBRUARY THE FREEZERS IN THE NEW PLANT WERE FILLED TO THE DOOR AND THE FORK LIFT TRUCK HAD DIFFICULTY PUTTING MEAT IN AT ALL.

4. JAMES MOLLOY, A SERGEANT WITH THE NIAGARA FALLS POLICE TESTIFIED THAT ON FEBRUARY 11TH HENRY MULLER HAD REQUESTED POLICE PROTECTION AT THE RESPONDENT'S PLANT AS THEY HAD LAID OFF SOME MEN, THE FREEZERS WERE FILLED AND THEY WERE WORRIED ABOUT THE PLANT AND EQUIPMENT. MOLLOY WENT TO THE PLANT ABOUT 7:00 P.M. ON THAT EVENING AND REPORTED TO MULLER. HE REMAINED ON DUTY THROUGHOUT THE NIGHT AND UNTIL 8:30 MONDAY MORNING. HE HAD LOOKED IN ONE FREEZER AND SAID THAT IT WAS ABOUT HALF FULL, BUT ADMITTED ON CROSS EXAMINATION THAT A NUMBER OF THEM WERE LOCKED AND THAT HE TOOK ONLY A QUICK LOOK IN ONE. MULLER WAS BUSY AT THE PLANT, MADE A PHONE CALL TO HIS LAWYER AND LEFT THE PLANT ABOUT 10:30 P.M. MOLLOY RECEIVED A TELEPHONE CALL FROM MULLER AT 6:45 A.M. THE NEXT MORNING AND THEN HE CAME TO THE PLANT AT ABOUT 7:00 A.M. A PICKET LINE STARTED OUTSIDE THE PLANT AT 7:00 A.M. AND HE WALKED OUT TO THE LINE WHERE HE SAW PYSHER WHO SAID THERE WOULD NOT BE ANY TROUBLE, THEY WERE JUST GIVING OUT INFORMATION.

5. HENRI OLEJNIK TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT FOR ABOUT TWO YEARS AS A LEAD HAND IN THE BONING DEPARTMENT. HE ALSO STATED THAT HE CONSIDERED HIMSELF A FOREMAN IN THAT DEPARTMENT. HE BECAME AWARE OF THE UNION ON FRIDAY, FEBRUARY 9TH AND ATTENDED A MEETING CONCERNING THE UNION THAT EVENING WITH PYSHER. HE WORKED HIS NORMAL HOURS ON SATURDAY MORNING AND LEFT THE PLANT AT 12:15 TO ATTEND THE UNION MEETING THAT AFTERNOON. DURING THE MORNING HE TOLD OTHER EMPLOYEES ABOUT THE MEETING. HE ALSO SPOKE TO HENRY MULLER THAT MORNING ABOUT WORKING MATTERS AND WHEN HE LEFT THE PLANT MULLER HAD SAID GOOD-BYE TO HIM. HE SIGNED AN APPLICATION FOR MEMBERSHIP CARD IN THE COMPLAINANT AT THE MEETING. ABOUT 2:00 P.M. THAT AFTERNOON HE SPOKE TO HENRY MULLER ON THE TELEPHONE ABOUT A TEST FOR SOME HAMS. ON SUNDAY EVENING AT ABOUT 10:00 P.M. A LETTER FROM THE RESPONDENT WAS DELIVERED TO HIS HOME ADVISING HIM OF THE LAY OFF. THIS WAS A SIMILAR LETTER TO THAT SENT TO PYSHER AND THE OTHER EMPLOYEES INCLUDED IN THE LAY OFF. HE THEN WENT TO MR. MULLER'S HOME AND ASKED FOR AN EXPLANATION OF THE LETTER AND AFTER A CONVERSATION ABOUT IT ASKED IF THAT

MEANT HE WAS FIRED AND MULLER SAID YES. HE THEN SAID THAT HE WOULD NOT WORK FOR MULLER AND MULLER SAID I HOPE NOT. ON THE MONDAY MORNING HE WENT TO THE PLANT AND WAS PRESENT WITH BELFLEUR AND CAIL WHEN HENRY MULLER REQUESTED THEM TO GO BACK TO WORK. NEITHER OF THEM WOULD CROSS THE PICKET LINE. MULLER THEN HAD GIVEN THEM UNTIL 9:00 A.M. TO REPORT OR THEY WOULD BE REPLACED. THERE WAS NO WARNING OF A LAY OFF GIVEN NOR HAD THERE BEEN ANY LAY OFFS SINCE HE WORKED FOR THE RESPONDENT. PRIOR TO THE LAY OFF THERE WERE 19 EMPLOYEES AND THERE HAD BEEN NO CHANGES IN THE WORK FORCE EXCEPT THAT THE COMPANY HAD HIRED TWO ADDITIONAL EMPLOYEES WHEN IT MOVED TO THE NEW PLANT. HE HAD WORKED SOME OVERTIME DURING THE PREVIOUS MONTH.

6. IN CROSS EXAMINATION MR. OLEJNIK DESCRIBED THE OPERATION OF THE BONING TABLE WHICH HE SUPERVISED AND WITHOUT GOING INTO ALL THE DETAILS OF THE CONVEYOR TYPE SYSTEM, IT IS EVIDENT THAT THE WHOLE LINE, WHICH OPERATES AS A TEAM, MUST BE THERE FOR IT TO BE OPERATIONAL. IN THE OLD PLANT ALL THE PRODUCTS WERE MOVED BY HAND AND IT WAS POSSIBLE TO WORK INDIVIDUALLY BUT NOT SO IN THE NEW PLANT. ACCORDINGLY, PRODUCTION WAS MUCH HIGHER IN THE NEW PLANT. OLEJNIK STATED THAT IN JANUARY AND AFTER A SHIPMENT OF MEAT IN FEBRUARY, THE FREEZERS WERE FULL BUT HE MAINTAINED THAT THE EMPLOYEES COULD STILL HAVE WORKED. HE SAID THERE WAS MORE MEAT COMING INTO THE PLANT IN JANUARY THAN WENT OUT AND IN SPITE OF THE INCREASE IN PRODUCTION, THE CUSTOMERS REMAINED THE SAME SO THE INVENTORY CAUGHT UP.

7. THE EVIDENCE OF SANDRA PATTERSON, ROBERT CANPION, MRS. G. MALONEY, MRS. K. CORMIER IS SIMILAR IN THAT THEY WERE ALL EMPLOYED BY THE RESPONDENT FOR VARIOUS PERIODS OF TIME. THEY BECAME AWARE OF THE UNION ON EITHER FRIDAY, FEBRUARY 9TH OR SATURDAY, FEBRUARY 10TH AND HAVING BEEN TOLD OF THE MEETING ON SATURDAY AFTERNOON, THEY ATTENDED AND SIGNED APPLICATION FOR MEMBERSHIP CARDS IN THE COMPLAINANT. EACH OF THEM RECEIVED ON SUNDAY EVENING, FEBRUARY 11TH, A LETTER SIMILAR TO THE LETTER THAT BOTH PYSHER AND OLEJNIK RECEIVED FROM THE RESPONDENT ADVISING THEM OF THEIR LAY OFF. MISS PATTERSON TESTIFIED THAT FERDINAND MULLER DELIVERED THE LETTER TO HER AT ABOUT 8:30 P.M. BUT SHE HAD NO CONVERSATION WITH HIM. THERE WAS NO PRIOR NOTICE OF THE LAY OFF AND SHE SAID THAT THE WORK ON THAT SATURDAY WAS NO DIFFERENT FROM ANY OTHER SATURDAY. MRS. MALONEY TESTIFIED THAT SHE ALONG WITH ALL THE OTHER WOMEN WORKING AT THE PLANT RECEIVED A RAISE ON JANUARY 8TH, 1968.

8. MR. L. B. FRENCH WORKED FOR THE RESPONDENT AS A BONER SINCE OCTOBER 1967 ON A PART TIME BASIS OF ABOUT TWO DAYS A WEEK. HENRY MULLER TELEPHONED HIM ON MONDAY, FEBRUARY 12TH AND ASKED HIM TO WORK WHICH HE DID FOR TWO FULL DAYS. HE WAS THE ONLY BONER IN THE PLANT EXCEPT MR. LOWRY WHO WAS PREPARING ORDERS. TWO WEEKS LATER HE WORKED ANOTHER TWO DAYS. BOTH TIMES HE STATED HE WAS CLEANING AND WORKING ON FRESH MEAT NOT FROZEN. MR. J. P. CAHILL ALSO EMPLOYED BY THE RESPONDENT ON A PART TIME BASIS WAS TELEPHONED BY MR. HENRY MULLER ON THAT MONDAY EVENING, WHO AT THAT TIME TOLD CAHILL THAT HE HAD LAID OFF SOME OF THE EMPLOYEES AND THE REST WALKED OUT ON HIM. AS A

RESULT OF ANOTHER TELEPHONE CONVERSATION, HE ADVISED MULLER HE WOULD NOT GO IN TO WORK AND HE HAD NOT BEEN BACK AS OF THE DATE OF THE HEARING.

9. MARTIN COSCARELLA TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT IN FEBRUARY 1968, ONE WEEK BEFORE THE LAY OFF. HE ATTENDED THE UNION MEETING ON FEBRUARY 10TH AND SIGNED A MEMBERSHIP CARD. ON SUNDAY EVENING ABOUT 11:45 P.M. HE RECEIVED A TELEPHONE CALL FROM MR. HENRY MULLER WHO TOLD HIM, BECAUSE OF OVER-PRODUCTION THE FREEZERS WERE FULL AND HE HAD TO SLOW THINGS DOWN SO HE WAS BEING LAID OFF. HE WENT TO THE PLANT ON THE NEXT MORNING BUT DID NOT REPORT FOR WORK. HE DID RETURN TO WORK FOR ONE DAY SINCE THE LAY OFF.

10. AT THE CONCLUSION OF THE COMPLAINANT'S EVIDENCE COUNSEL FOR THE RESPONDENT MOVED THAT THE BOARD DISMISS THE COMPLAINT AS IT APPLIED TO ANDRAS BOGNAR, RUSSELL J. CAIL, LINDA MENZIES, WARREN AUBIE, WILHELM GOETZ AND GILL BELFLEUR AS THERE WAS NO EVIDENCE PRESENTED TO THE BOARD WITH RESPECT TO ANY OF THESE PERSONS. THE COMPLAINANT AGREED THAT THERE WAS NO CLAIM WITH RESPECT TO CAIL AND BELFLEUR BUT ARGUED THAT THE BOARD COULD ISSUE A CEASE AND DESIST ORDER BASED ON THE RESPONDENT'S REPLY IN ORDER TO STATE THAT THE OTHER AGGRIEVED PERSONS WERE DISCRIMINATED AGAINST BY THE RESPONDENT BUT WITHOUT A REMEDIAL ORDER. THE RESPONDENT ARGUED THAT THE BASIS FOR THE COMPLAINT WAS THAT THESE PERSONS WERE LAID OFF FOR UNION ACTIVITIES AND IN THAT REGARD EVIDENCE MUST BE PRESENTED FOR EACH INDIVIDUAL AS TO SUCH ACTIVITIES. THE RESPONDENT FURTHER REQUESTED THAT THE COMPLAINT BE DISMISSED AS TO THE CLAIMS OF JOSEPH PARENT, LYLE PYSHER AND MARTIN COSCARELLA.

11. THE BOARD CAREFULLY CONSIDERED THE EVIDENCE BEFORE IT AND THE REPRESENTATIONS OF COUNSEL WITH RESPECT TO THE MATTERS CONTAINED IN PARAGRAPH 9 ABOVE. THERE BEING NO EVIDENCE BEFORE US AS TO THE COMPLAINANT'S CLAIMS WITH RESPECT TO CAIL, BELFLEUR, BOGNAR, MENZIES, AUBIE AND GOETZ AND NOT BEING SATISFIED FROM THE EVIDENCE BEFORE US THAT THIS WAS A PROPER CASE FOR A CEASE AND DESIST ORDER AS SUGGESTED BY THE COMPLAINANT, THE BOARD RULED AT THE HEARING THAT THE COMPLAINT AS IT PERTAINED TO EACH OF THOSE AGGRIEVED PERSONS WAS DISMISSED.

12. WITH RESPECT TO THE CLAIM OF JOSEPH PARENT, THE EVIDENCE WAS THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT THREE WEEKS PRIOR TO THE LAY OFF. HE HAD ATTENDED THE UNION MEETING ON SATURDAY AFTERNOON AND SIGNED A MEMBERSHIP CARD. HE DID NOT SPEAK WITH ANY OF THE MANAGEMENT OF THE RESPONDENT, NOR DID HE GET A NOTICE OF LAY OFF. APPARENTLY HE WAS TOLD BY SOME OTHER EMPLOYEE NOT TO GO INTO WORK ON MONDAY AND HE NEVER DID GO BACK TO WORK. THE BOARD CONSIDERED THIS TESTIMONY AND CONCLUDED THAT THERE WAS NO EVIDENCE TO SUPPORT THE AGGRIEVED PERSON'S CLAIM AND ACCORDINGLY DISMISSED THE COMPLAINT WITH RESPECT TO JOSEPH PARENT. THE RESPONDENT'S MOTION FOR DISMISSAL OF THE COMPLAINT WITH RESPECT TO THE CLAIMS OF PYSHER AND COSCARELLA WAS NOT ALLOWED AT THAT TIME.

13. THE RESPONDENT'S EVIDENCE IS IN PART AS FOLLOWS. JACK HOLLAND, A MEAT INSPECTOR FOR THE FEDERAL DEPARTMENT OF AGRICULTURE, TESTIFIED THAT HE HAD BEEN ASSIGNED BY HIS EMPLOYER FOR DUTY AT CERTAIN MEAT PACKING PLANTS INCLUDING THAT OF THE RESPONDENT. HIS DUTIES ARE TO ENSURE THAT ALL THE MEAT COMING INTO THE PLANT IS FEDERALLY INSPECTED AND THAT THE MEAT BEING SHIPPED OUT OF IT IS PROPERLY MARKED. IF THE PROPER PROCEDURES WERE NOT TAKEN HE HAS THE AUTHORITY TO DETAIN THE MEAT SHIPMENT OR TO CLOSE DOWN THE PLANT. HE WAS FAMILIAR WITH THE RESPONDENT'S OLD PLANT AS WELL AS THE NEW PLANT AND STATED THAT IN JANUARY 1968, THE PRODUCTION OF MEAT ALMOST TRIPLED FROM WHAT IT HAD BEEN IN THE OLD PLANT. THE INCREASED PRODUCTION WAS STORED IN THE FREEZERS AT THE PLANT, WHICH WERE FULL OF FROZEN MEAT AT THE END OF JANUARY 1968. HE SAID THAT HE HAD SPOKEN TO HENRY MULLER ON OCCASION ABOUT THE INCREASE OF MEAT IN THE FREEZERS AND TWO WEEKS BEFORE THE LAY OFF HAD TOLD MULLER THAT HE WOULD HAVE TO SLOW DOWN HIS OPERATIONS AS THERE WAS NO PLACE TO PUT THE PRODUCT, OTHERWISE HOLLAND MIGHT HAVE TO SHUT IT DOWN. SALES OF THE PRODUCT IN JANUARY DID NOT KEEP UP TO THE PRODUCTION. HE AGAIN ADVISED MULLER OF THE PROBLEM ONE WEEK BEFORE THE LAY OFF, HOWEVER, HE STATED THE PLANT WAS IN NORMAL PRODUCTION DURING THAT WEEK. HE ALSO STATED THAT THERE WAS SOME SPACE REMAINING IN THE FREEZERS FOR MEAT AND HE WAS SURPRISED TO LEARN ON THE FOLLOWING MONDAY THAT THERE HAD BEEN A LAY OFF. HOLLAND SAID THAT THE AUTOMATED BONING TABLE DID NOT OPERATE AFTER FEBRUARY 12TH.

14. THE EVIDENCE OF HENRY MULLER, THE TREASURER AND GENERAL MANAGER OF THE RESPONDENT, IS LENGTHY AND DETAILED AND WE ARE THEREFORE SETTING OUT ONLY THE RELEVANT ASPECTS TO THIS MATTER. THE RESPONDENT WAS INCORPORATED IN 1952 AND UNTIL JANUARY 8TH, 1968 WAS LOCATED AT CENTRE STREET IN NIAGARA FALLS. IN THIS PLANT BONING CONSTITUTED 75% OF THE BUSINESS AND THE BALANCE WAS KNOWN AS THE RESTAURANT DIVISION. THERE WERE A TOTAL OF 18 EMPLOYEES AT THAT PLANT. THE METHOD OF PRODUCTION WAS MANUAL WITH NO AUTOMATION OR MECHANIZED HANDLING. THE PLANT CONTAINED 6,000 SQUARE FEET WITH A FREEZER CAPACITY OF 1,700 SQUARE FEET. IN JANUARY, THE RESPONDENT MOVED TO A NEW PLANT ON PORTAGE ROAD IN NIAGARA FALLS CONTAINING 24,000 SQUARE FEET WITH 6,000 SQUARE FEET OF FREEZER CAPACITY. THE RESPONDENT INSTALLED AN AUTOMATIC BONING TABLE AND OBTAINED A FORK LIFT TRUCK TO USE IN PALLETIZED STORAGE OF INVENTORY. PRIOR TO THE MOVE, THE AVERAGE WEEKLY PRODUCTION WAS ABOUT 30-40,000 LBS. AND IN THE FIRST WEEK AFTER THE MOVE, THE PRODUCTION WAS DOUBLED AND SUBSEQUENTLY TRIPLED. THE RESPONDENT HIRED TWO ADDITIONAL EMPLOYEES AFTER MOVING TO THE BONING LINE. HE STATED THAT THE INCREASE IN PRODUCTION WAS DUE MAINLY TO THE AUTOMATED EQUIPMENT WHICH IS RUN ON A PRODUCTION LINE BASIS. THE BONING TABLE CANNOT OPERATE WITH ONE MAN, THERE MUST BE A TEAM. MULLER IS THE ONLY SALESMAN AND AT THE OLD PLANT, WAS ABLE TO KEEP SALES IN LINE WITH PRODUCTION. HOWEVER, WITH THE SUDDEN TRIPLING OF PRODUCTION, WITH HIS CUSTOMERS REMAINING ESSENTIALLY THE SAME, HE COULD NOT KEEP THE SALES IN LINE WITH THE PRODUCTION. COUPLED WITH THIS PROBLEM, WAS A DECREASE IN THE SALE PRICE OF MEAT IMPORTED BY THE U.S. FROM AUSTRALIA, WHICH WAS A

NORMAL COMPETITIVE PRODUCT BUT WHICH COMPETITION HE COULD NOT MEET THIS YEAR AT SUCH PRICES. THIS HAD NOT HAPPENED IN PREVIOUS YEARS. AFTER THE LAY OFF, THE RESPONDENT CONTINUED WITH FRESH MEAT BONING BUT NOT FROZEN. HE STATED THAT THE FREEZERS IN THE NEW PLANT WILL HOLD 360,000 LBS. OF MEAT AND ON FEBRUARY 10TH WHEN HE TOOK AN INVENTORY COUNT THERE WERE 354,000 LBS. OF MEAT IN THE FREEZERS. THE SALES IN JANUARY 1968 WERE THE LOWEST FOR A MONTH IN FIVE YEARS AND ALTHOUGH SALES INCREASED IN FEBRUARY MUCH OF THE PRODUCT WAS SOLD AT COST.

15. MR. MULLER GAVE EVIDENCE ON THE FINANCIAL CONDITION OF THE RESPONDENT WHICH IN FEBRUARY WAS DETERIORATING BECAUSE THERE WERE NOT SUFFICIENT SALES TO PROVIDE THE NECESSARY FUNDS TO COVER THE COST OF PRODUCT PURCHASES THEREBY REQUIRING ADDITIONAL BANK ACCOMMODATION. PURCHASES WERE MADE ON A C.O.D. BASIS OR PAID WITHIN 7 DAYS. MULLER CONSIDERED THE POSITION OF THE RESPONDENT IN JANUARY BUT IT WAS HIS OPINION AT THAT TIME THAT IT WOULD GET BETTER NOT WORSE. DURING THE WEEK OF FEBRUARY 5TH, THE MARKET CONDITIONS BECAME WORSE, THE BANK BEGAN TO PRESS AND THE FREEZERS WERE ALMOST FULL OF PRODUCT. HENRY MULLER ALSO STATED THAT HIS FATHER, THE PRESIDENT OF THE RESPONDENT, BROUGHT PRESSURE ON HIM TO FIND A SOLUTION. ON SATURDAY, FEBRUARY 10TH, 1968, THE RESPONDENT RECEIVED A LETTER DATED FEBRUARY 9TH FROM ITS BANK SETTING OUT THE PRESENT POSITION OF THE RESPONDENT WITH IT AND THE MANAGER REQUESTED A MEETING AS SOON AS POSSIBLE. MULLER SAID THAT THEY HAD NEVER BEFORE RECEIVED SUCH A LETTER, HIS FATHER AND HIS WIFE MET TO DISCUSS THE SITUATION. AS A RESULT OF THIS MULLER TOOK AN INVENTORY STARTING AT ABOUT 10:30 A.M. WHICH HE FINISHED ABOUT 2:30 P.M. ONCE THIS POSITION WAS ESTABLISHED AND CONSIDERING THAT THREE LOADS OF MEAT OF 30,000 LBS. PER LOAD WERE ORDERED FOR DELIVERY IN THE FOLLOWING WEEK, THEY THEN DECIDED TO STOP BONING. ACCORDINGLY, THEY DECIDED TO LAY OFF THE BONING LINE EMPLOYEES BUT TO KEEP THE RESTAURANT DIVISION EMPLOYEES. ALSO AT THAT TIME THEY DECIDED TO WRITE A LETTER TO EACH EMPLOYEE AFFECTED BY THE LAY OFF AND TO DELIVER THE LETTERS BY HAND ON SUNDAY. MULLER SAID THAT THE LETTERS WERE TYPED BY HIS WIFE BETWEEN 3:00 P.M. AND 5:00 P.M. SATURDAY AFTERNOON. AS A LOAD OF BEEF WAS COMING INTO THE PLANT ON MONDAY, WHICH THEY DID NOT WANT, THEY WANTED THE EMPLOYEES NOTIFIED OF THE LAY OFF PRIOR TO THAT TIME, AND EACH EMPLOYEE WAS TO BE NOTIFIED SIMULTANEOUSLY.

16. MR. MULLER STATED THAT HE DID NOT KNOW OF A UNION OR A UNION MEETING WHEN THE OFFICERS OF THE RESPONDENT DECIDED TO LAY OFF THE EMPLOYEES. HE HAD TELEPHONED OLEJNIK ON SATURDAY AFTERNOON CONCERNING SOME TESTS ON TENDERLOINS AND HAD TELEPHONED LOWRY AFTER 6:00 P.M. THAT AFTERNOON TO FIND OUT WHERE SOME TENDERLOINS HAD BEEN PLACED. LOWRY WENT TO THE PLANT AND SAW MULLER BUT DID NOT SHOW HIM A UNION CARD THAT DAY. MULLER DID NOT TELEPHONE ANY OTHER EMPLOYEE NOR DID HE TALK TO ANYONE ABOUT A UNION THAT DAY. AS OF FEBRUARY 10TH THERE

WERE 21 PERSONS EMPLOYED BY THE RESPONDENT. THE RESPONDENT SUBSEQUENTLY LAID OFF 14 AND RETAINED THE REMAINDER. MULLER MAINTAINED THAT THE RESPONDENT LAID OFF ONLY THOSE THAT WERE NECESSARY AND EACH EMPLOYEE LAID OFF, EXCEPT COSCARELLA, RECEIVED A LETTER IN SIMILAR FORM WHICH SET OUT THE REASONS FOR THE LAY OFF. CAIL AND BELFLEUR WERE DISCHARGED BY THE RESPONDENT FOR FAILURE TO REPORT TO WORK ACCORDING TO THE RESPONDENT'S POLICY IN THAT REGARD BUT SOME TIME LATER THEY DID RETURN TO WORK FOR THE RESPONDENT. AS WELL, PYSHER WAS ASKED TO RETURN TO WORK ON FEBRUARY 17TH BUT HE REFUSED AND THE RESPONDENT THEN TERMINATED HIS EMPLOYMENT. ON MARCH 19TH BOGNAR WAS RECALLED AND PARENT HIRED AT ANOTHER PLANT. COSCARELLA WAS EMPLOYED FOR BONE CUTTING ON MARCH 29TH AND ON APRIL 15TH, CANPION WAS RECALLED. MULLER SAID THAT HE HIRED EVERY PERSON BACK IF AND WHEN THEY ASKED. THE BONING TABLE HAD NOT OPERATED SINCE THE LAY OFF BUT THERE WAS FRESH MEAT BONING WORK AVAILABLE. ON APRIL 5TH, OLEJNIK, MALONEY, AND AUBIE WERE RECALLED AND MULLER STATED THAT THE OTHERS WOULD BE RECALLED AS REQUIRED. MULLER STATED THAT THE UNION DID NOT HAVE ANYTHING TO DO WITH THE DECISION TO LAY OFF EMPLOYEES AND NO ONE SAID ANYTHING ABOUT A UNION TO HIM ON THE SATURDAY OR SUNDAY IN QUESTION. HE DENIED THAT THE RESPONDENT LAID ANY OF THE EMPLOYEES OFF BECAUSE OF THEIR UNION ACTIVITIES.

17. UNDER CROSS-EXAMINATION, MULLER STATED THAT THERE WAS 1/2 HOUR MORE PRODUCTION PER DAY PER EMPLOYEE AT THE NEW PLANT AS THERE HAD BEEN PREVIOUSLY AS THERE THE EMPLOYEES WERE THEMSELVES RESPONSIBLE FOR CLEANING UP, BUT AT THE NEW PLANT HE HIRED A CLEANER WHICH WAS A CHEAPER METHOD AND DID RESULT IN EXTRA PRODUCTION. THE HALF DAY OF WORK ON SATURDAY WAS USUAL AND WAS MAINLY FOR THE RESTAURANT DIVISION BUT THE RESPONDENT THOUGHT IT BEST TO HAVE ALL THE EMPLOYEES WORKING AT THE SAME TIME. HE ADMITTED THAT MANAGEMENT KNEW THE RESPONDENT HAD FINANCIAL TROUBLES BEFORE THEY RECEIVED THE BANK'S LETTER AND FOLLOWING THE LAY OFF THE RESPONDENT WAS ABLE TO ARRANGE FURTHER ACCOMMODATION AT THE BANK AND CONTINUED IN LIMITED OPERATION. THE RESPONDENT WAS IN NO DANGER OF GOING OUT OF BUSINESS. UP UNTIL FEBRUARY 10TH AT NOON THE RESPONDENT MAINTAINED ITS WORK LOAD BEING FULLY AWARE OF ITS FINANCIAL POSITION AND FALLING SALES. MULLER SAID THAT HE AND THE OTHER MEMBERS OF MANAGEMENT THOUGHT THAT THE FAIREST WAY TO TELL THE EMPLOYEES OF THE LAY OFF WAS BY LETTER AND DID NOT WANT TO CALL THEM TOGETHER TO DISCUSS IT AS THE LETTER EXPLAINED THE SITUATION IN FULL. AT THE TIME OF THE MOVE TO THE NEW PLANT, THE RESPONDENT GAVE WAGE INCREASES TO THE EMPLOYEES IN VARYING AMOUNTS.

18. AS TO THE MEETING AT THE PLANT WITH LOWRY ON SATURDAY EVENING, MULLER SAID THAT LOWRY HAD VOLUNTEERED TO GO TO THE PLANT TO SHOW HIM WHERE THE MEAT WAS AND HAD ARRIVED THERE IN AN INEBRIATED CONDITION AND SAID THAT HE HAD BEEN AT THE BROCK WITH THE OTHER EMPLOYEES. MULLER DID NOT ASK HIM WHY BUT HE SAID HE PUT TWO AND TWO TOGETHER AND ASSUMED IT WAS ABOUT WAGES AT THE PLANT. MULLER ASSERTED HOWEVER THAT LOWRY DID NOT SHOW HIM A UNION CARD UNTIL THE FOLLOWING

MONDAY AFTERNOON. MULLER STATED THAT THE FIRST TIME THAT HE FOUND OUT ABOUT A UNION WAS ON MONDAY MORNING WHEN THE POLICEMAN SO ADVISED HIM. THERE WERE NO OTHER DISCUSSIONS WITH OTHER EMPLOYEES ABOUT UNION ACTIVITIES. IN CONNECTION WITH THOSE EMPLOYEES THAT HAVE BEEN RECALLED BY THE RESPONDENT, MULLER SAID THAT BECAUSE OF RUSSELL CAIL'S FINANCIAL DIFFICULTIES HE RECALLED HIM BEFORE PYSHER AND GOETZ, ALTHOUGH WHILE ADMITTING THAT THE LATTER TWO WERE JUST AS COMPETENT AND HAD MORE SENIORITY. WITH ONE EXCEPTION, THE RESPONDENT DID NOT HIRE ANY NEW EMPLOYEES AFTER THE DATE OF THE LAY OFF, AND THE ONE THAT WAS HIRED WAS THERE FOR 4 OR 5 DAYS ONLY, DURING THE THIRD WEEK FOLLOWING THE LAY OFF TO ASSIST IN GETTING OUT 100% CUTS. MULLER THOUGHT THAT, ALTHOUGH THE BONERS WOULD FIND OTHER JOBS IN THE MEANTIME, THEY WOULD RETURN WHEN WORK WAS AGAIN AVAILABLE AT THE RESPONDENT'S PLANT. MULLER CLAIMED THAT THE RESPONDENT HAD ALWAYS STOCKPILED SOME MEAT WHEN THE PRICES FELL IN THE FALL IN ORDER TO SELL LATER IN THE FOLLOWING YEAR WHEN THE PRICES RECOVERED, BUT ALWAYS IN THE PAST HE HAD HAD THE STOCKPILE SOLD. THIS YEAR THE SELLING PRICES FELL AND THE RESPONDENT COULD NOT SELL THE PRODUCT AT A PROFIT. THE QUANTITY OF MEAT ORDERED DURING THE WEEK OF FEBRUARY 5TH FOR DELIVERY IN THE FOLLOWING WEEK WAS TO BE USED TO KEEP THE BONING LINE MOVING, BUT THE DECISION TO LAY OFF EMPLOYEES WAS TAKEN ON FEBRUARY 10TH AFTER A FAMILY CONSULTATION CONCERNING THE RESPONDENT'S POSITION AS PREVIOUSLY SET OUT. MULLER SAID THE FREEZER CAPACITY IN THE NEW PLANT WAS 4 1/2 TIMES THE SIZE OF THE FREEZERS IN THE OLD PLANT. THERE WERE ABOUT 150,000 LBS. IN STORAGE AT THE OLD PLANT, AND 360,000 LBS. IN THE NEW PLANT WHICH HE CLAIMED FILLED THE FREEZERS. THE EXPLANATION FOR THE DIFFERENCE IN THE AMOUNTS HAVING REGARD TO THE SIZES OF THE FREEZERS IS THE PALLETIZING METHOD OF STORAGE AT THE NEW PLANT.

19. BOTH COUNSEL INVOLVED IN THIS MATTER PRESENTED ABLE AND PERSUASIVE ARGUMENTS ON BEHALF OF THEIR RESPECTIVE CLIENTS WHICH THE BOARD HAS CAREFULLY CONSIDERED IN ARRIVING AT ITS DECISION. THERE WAS CONSIDERABLE ARGUMENT ADDRESSED TO THE QUESTION OF THE SUFFICIENCY OF PARTICULARS IN A CASE OF THIS NATURE. BASICALLY, THE RESPONDENT IS ENTITLED TO KNOW IN ADVANCE THE CASE IT MUST BE PREPARED TO MEET IN ORDER TO ASSURE A FAIR HEARING. RULE 47 OF THE BOARD'S RULES OF PROCEDURE IS IN PART AS FOLLOWS:

"47. (1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON HE SHALL,

(A) INCLUDE IN THE APPLICATION OR COMPLAINT; OR

(B) FILE A NOTICE OF INTENTION THAT SHALL CONTAIN,

A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME

WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND THE NAMES OF PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED, AND, WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTES A VIOLATION OF ANY PROVISION OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISION.

(2) WHERE, IN THE OPINION OF THE BOARD, A PERSON HAS NOT FILED NOTICE OF INTENTION PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER OR IRREGULAR CONDUCT, HE SHALL NOT ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS, EXCEPT WITH THE CONSENT OF THE BOARD AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE."

THE APPLICANT IS NOT REQUIRED TO SET OUT ALL THE EVIDENCE WHICH IT WILL USE TO SUPPORT THE CLAIM, BUT IN OUR OPINION MUST SET OUT THE MATERIAL FACTS IN ISSUE, WHICH IF THE APPLICANT FAILS TO DO OR OMITS CERTAIN MATERIAL FACTS ON WHICH IT INTENDED TO RELY, SUBJECT TO THE PARTIES' RIGHT TO ASK FOR AND RECEIVE PARTICULARS, THE APPLICANT IS RESTRICTED TO THE EVIDENCE WHICH WILL SUPPORT THE FACTS IN ISSUE AND CANNOT SUBSEQUENTLY COMPLAIN IF THE EVIDENCE PRESENTED FAILS TO ESTABLISH THE ALLEGATIONS. THE RESPONDENT IS ENTITLED TO EXPECT THAT THE ALLEGATIONS SET OUT IN THE COMPLAINT ARE THOSE THAT WILL BE SUBSTANTIATED BY EVIDENCE AND TO WHICH IT WILL, IN THE NORMAL COURSE, BE EXPECTED TO GIVE EVIDENCE IN REPLY. ACCURACY IN SETTING OUT THE MATERIAL FACTS ON WHICH THE COMPLAINT IS BASED IS THEREFORE QUITE NECESSARY TO ENSURE A PROPER HEARING. SEE THE BOAKE MANUFACTURING CO. LTD. CASE, C.L.S. 76-512. AT THE HEARING, THE BOARD RULED THAT QUESTIONS ASKED OF MULLER BY THE APPLICANT IN CROSS EXAMINATION, AS TO MATTERS NOT RELEVANT TO THE FACTS IN ISSUE, WENT ONLY TO THE CREDIBILITY OF THAT WITNESS AND COULD NOT BE ADMITTED AS EVIDENCE OF SUCH MATTERS NOT IN ISSUE. PARAGRAPH 3 OF THE COMPLAINT STATES AS FOLLOWS:

"(c) LATER THE SAME AFTERNOON, HENRY MULLER, THE RESPONDENT'S MANAGER, PHONED SEVERAL OF THE AGGRIEVED PERSONS AND QUESTIONED THEM ABOUT VARIOUS MATTERS, INCLUDING THE UNION MEETING;"

WE DO NOT FEEL THAT THIS STATEMENT IS BROAD ENOUGH TO ADMIT EVIDENCE TO ESTABLISH ANY OTHER CONVERSATIONS IN CONNECTION WITH UNION ACTIVITY OTHER THAN BY TELEPHONE THAT AFTERNOON IN QUESTION. THE EVIDENCE OF THE CONVERSATION AT THE PLANT BETWEEN LOWRY AND MULLER HAS THEREFORE BEEN ACCEPTED BY THIS BOARD ONLY IN SO FAR AS IT MAY TEST THE CREDIBILITY OF THESE WITNESSES.

20. A CASE REFERRED TO BY BOTH COUNSEL IS THE NATIONAL AUTOMATIC VENDING Co. LTD. CASE, CLLC VOL. 2, 1960-1964 16,278 AT P. 1162 THE RELEVANT PART OF WHICH IS AS FOLLOWS:

"IN COMPLAINTS UNDER SECTION 65 THERE IS OFTEN OF COURSE, CONFLICTING TESTIMONY BETWEEN THE EMPLOYER'S STATEMENTS THAT HE HAS FIRED THE EMPLOYEE FOR INCOMPETENCE OR SOME OTHER NON-DISCRIMINATORY REASON AND THE EMPLOYEE'S ALLEGATIONS, BASED USUALLY ON CIRCUMSTANTIAL EVIDENCE, THAT HIS DISMISSAL WAS FOR THE ULTERIOR PURPOSE OF DEFEATING THE UNION. IN WEIGHING THE EVIDENCE AS TO THESE CONFLICTING CLAIMS, THE BOARD MUST CONSIDER ALL THE CIRCUMSTANCES, INCLUDING THE CREDIBILITY OF WITNESSES, THE NATURE OF THE REASONS GIVEN, IF ANY, AT THE TIME FOR THE EMPLOYER'S ACTION AND THE BASIS THEREFOR, THE EMPLOYMENT HISTORY OF THE EMPLOYEE AFFECTED, THE EXISTENCE OF CONTEMPORANEOUS UNION ACTIVITY, THE PARTICIPATION BY THIS EMPLOYEE AND OTHER EMPLOYEES IN SUCH ACTIVITIES, ANY OVERT ACTS OF THE EMPLOYER WHICH MAY HAVE BEEN IN RESPONSE TO SUCH ACTIVITIES, THE TIMING AND MANNER OF THE DISCHARGE, THE LIKELIHOOD OR PROBABILITY OF THE EMPLOYER'S ACTION FOR THE REASONS GIVEN, AND THE FACT THAT THE TRUE REASONS FOR THE DISCHARGE OFTEN LIE EXCLUSIVELY WITHIN THE KNOWLEDGE OF THE EMPLOYER. NEEDLESS TO SAY, HOWEVER, THE BOARD MUST ALSO BE CIRCUMSPECT TO PREVENT AN INNOCENT EMPLOYER FROM BEING VICTIMIZED BY UNFOUNDED OR IMAGINARY CLAIMS OF DISCRIMINATION LAUNCHED MERELY BECAUSE AN EMPLOYEE'S DISCHARGE IS COINCIDENTAL WITH A UNION'S ORGANIZATIONAL CAMPAIGN. IN THIS RESPECT THERE MUST, OF COURSE, BE EVIDENCE OF A SUBSTANTIAL NATURE FROM WHICH THE BOARD CAN BE SATISFIED BY REASONABLE INFERENCES OR DIRECT EVIDENCE THAT THE EMPLOYEE HAS BEEN DISCHARGED CONTRARY TO THE ACT."

THE APPLICANT HAS PROVEN IN THE INSTANT CASE THAT CERTAIN EMPLOYEES OF THE RESPONDENT ENGAGED IN UNION ACTIVITY AND ORGANIZATION CONTEMPORANEOUSLY WITH THE OCCURRENCE OF A LAY OFF INCLUDED IN WHICH WERE EMPLOYEES WHO HAD JOINED A UNION. THE FACT OF EITHER JOINING A UNION OR OF UNION ACTIVITY BY AN EMPLOYEE COUPLED WITH THE FACT THAT HE WAS DISCHARGED OR LAID OFF DOES NOT PER SE ESTABLISH THAT HE WAS DISCRIMINATED AGAINST BY HIS EMPLOYER CONTRARY TO THE ACT. WHERE THOSE CIRCUMSTANCES EXIST THE EVIDENCE MAY BE SUCH THAT IT MAY CAST A BURDEN OF EXPLANATION ON THE EMPLOYER TO SATISFY THE BOARD THAT HIS ACTIONS VIS-A-VIS THAT EMPLOYEE WERE NOT CONTRARY TO THE ACT. IN THIS RESPECT THE BOARD MUST LOOK AT ALL THE EVIDENCE BEFORE IT TO DETERMINE THE REASON OR MOTIVATION OF THE EMPLOYER TO ACT IN THE MANNER ALLEGED. IT IS ALSO TAKEN INTO ACCOUNT THAT THE REASON FOR HIS ACTIONS ARE USUALLY WITHIN THE SOLE

KNOWLEDGE OF THE EMPLOYER AND A COMPLAINANT SELDOM HAS DIRECT EVIDENCE OF DISCRIMINATORY CONDUCT BY THE EMPLOYER. THE BURDEN OF PROOF ON A COMPLAINANT IN THESE CASES IS NO HIGHER THAN THAT IN A CIVIL ACTION OF PROVING THE CLAIM OF THE AGGRIEVED PERSON ON THE BALANCE OF PROBABILITIES. AS SET OUT IN THE NATIONAL AUTOMATIC VENDING Co. LTD. CASE [SUPRA] THERE MUST BE SUBSTANTIAL EVIDENCE IN SUPPORT OF THE COMPLAINT.

21. THE COMPLAINANT DID ESTABLISH IN THE INSTANT CASE, A LAY OFF OF THE RESPONDENT'S EMPLOYEES IMMEDIATELY AFTER CERTAIN EMPLOYEES ATTENDED A UNION ORGANIZING MEETING AT WHICH 14 OUT OF A TOTAL OF 21 EMPLOYEES SIGNED APPLICATIONS FOR MEMBERSHIP CARDS. THE COMPLAINANT THEN ALLEGED THAT THE RESPONDENT KNEW OF THE MEETING AFTER QUESTIONING CERTAIN EMPLOYEES ON THE TELEPHONE CONCERNING THE UNION. AS A RESULT OF THIS KNOWLEDGE, THE RESPONDENT IMMEDIATELY DECIDED TO LAY OFF CERTAIN EMPLOYEES TO THWART THE UNION ORGANIZATION. THE COMPLAINANT SUGGESTS THAT THE TIMING OF THE LAY OFF AND THE MANNER IN WHICH NOTICE OF IT WAS GIVEN TO THE EMPLOYEES CONCERNED SUPPORTS ITS ALLEGATIONS THAT THE CONCERN ABOUT UNION ORGANIZATION WAS THE PRIME MOVING FACTOR OF THE RESPONDENT IN TAKING ITS ACTION. THE COMPLAINANT SUBMITS THAT THE ECONOMIC EXPLANATION FOR THE LAY OFF TENDERED BY THE RESPONDENT IS MERELY A SMOKE SCREEN TO HIDE ITS REAL PURPOSE WHICH WAS TO DEFEAT THE UNION.

22. IN THIS CASE THE CREDIBILITY OF THE WITNESSES IS AN IMPORTANT ISSUE IN MAKING A DETERMINATION ON THE MERITS OF THE APPLICATION. AT THE HEARING WE HAD THE OPPORTUNITY TO EXAMINE THE Demeanour OF THE WITNESSES AND THE MANNER IN WHICH EACH OF THEM GAVE THEIR EVIDENCE. IN THIS REGARD, THE WHOLE OF THE RESPONDENT'S REPLY TO THE COMPLAINT MUST BE WEIGHED ON THE CREDIBILITY OF HENRY MULLER, THE RESPONDENT'S MANAGER. HE GAVE HIS TESTIMONY IN A STRAIGHT-FORWARD, FRANK, MANNER AND WAS VIGOROUSLY CROSS-EXAMINED BY COUNSEL FOR THE COMPLAINANT AND WAS IN THE MAIN, UNSHAKEN IN HIS TESTIMONY. WHILE THERE ARE SOME RESPECTS IN HIS LENGTHY TESTIMONY THAT ARE OF A PARTISAN NATURE WE WOULD ACCEPT HIS TESTIMONY WHERE IT IS IN CONFLICT WITH ANY OF THE OTHER WITNESSES AND PARTICULARLY PREFER HIS ACCOUNT OF THE INCIDENTS ON THE SATURDAY AFTERNOON IN QUESTION AS A MORE PROBABLE COURSE OF EVENTS. WE DO NOT ACCEPT LOWRY'S TESTIMONY THAT HE SHOWED MULLER HIS UNION CARD THAT DAY. OF COURSE, EVEN IF LOWRY'S TESTIMONY IS ACCEPTED THAT HE SHOWED HIS MEMBERSHIP CARD TO MULLER AT ABOUT 6:00 P.M. ON SATURDAY, ON THE STRENGTH OF MULLER'S TESTIMONY, THE DECISION TO LAY OFF THE EMPLOYEES HAD ALREADY BEEN MADE AND THE NOTICES OF LAY OFF PREPARED. IT IS CLEAR THAT THE COMPLAINANT DID NOT ESTABLISH ITS ALLEGATION THAT HENRY MULLER ACQUIRED KNOWLEDGE OF THE UNION MEETING THROUGH TELEPHONE CONVERSATIONS WITH EMPLOYEES.

23. THE PITH OF THE MATTER BEFORE US HOWEVER, IS WHETHER IN ALL THE CIRCUMSTANCES THE EMPLOYEES CONCERNED WERE DISCRIMINATED AGAINST BY THE RESPONDENT CONTRARY TO THE ACT. IN EXAMINING THE EXPLANATIONS OFFERED BY THE RESPONDENT FOR ITS ACTIONS, WE ARE IMPRESSED WITH THE

APPARENT FINANCIAL DIFFICULTIES THAT WERE OBVIOUS TO THE RESPONDENT IN THE WEEKS PRIOR TO THE LAY OFF AND WHICH CULMINATED IN THE LETTER FROM ITS BANKER, DELIVERED TO IT ON FEBRUARY 10TH. THIS LETTER COULD BE TERMED THE "STRAW THAT BROKE THE CAMEL'S BACK". IT IS NOT FOR THE BOARD TO ASSESS WHETHER THE DECISION TAKEN BY MANAGEMENT WAS CORRECT OR THE ONLY ONE THAT COULD BE TAKEN, OR WHETHER THE SITUATION WAS HANDLED IN A REASONABLE AND FAIR MANNER, BUT ONLY WHETHER THE LAY OFF RESULTED FROM A DESIRE ON THE PART OF THE RESPONDENT TO DEFEAT OR THWART UNION ORGANIZATION OF ITS EMPLOYEES. EMPLOYEES ARE USUALLY SUSPICIOUS OF THEIR EMPLOYER WHEN THEIR UNION ACTIVITIES, PERHAPS NOT PREVIOUSLY PRESENT, CORRESPOND TO ACTIONS TAKEN BY THE EMPLOYER TO TERMINATE THEIR EMPLOYMENT. THE EXISTENCE OF SUCH ACTIVITY IS ONLY ONE FACTOR WHICH MUST BE CONSIDERED IN THE WHOLE MATTER. WITHOUT RECITING IN DETAIL ALL THE RESPONDENT'S EVIDENCE CONCERNING ITS FINANCIAL AFFAIRS, WE WOULD ASSUME THAT THE SUM TOTAL WOULD LEAD A REASONABLE BUSINESS MANAGER TO TAKE SOME IMMEDIATE REMEDIAL ACTION. THE MANNER IN WHICH THE NOTICES OF LAY OFF WERE GIVEN LEAVES MUCH TO BE DESIRED IN THE NORMAL HANDLING OF PERSONNEL RELATIONS, HOWEVER, THE RESPONDENT HAD NOT BEEN THROUGH SUCH A REQUIREMENT BEFORE AND WE ACCEPT THE PROPOSITION THAT THE RESPONDENT BELIEVED THAT THE WAY THIS WAS DONE WAS PROPER IN THE CIRCUMSTANCES. FACED WITH LOWER SELLING PRICES, INCREASED PRODUCTIVITY, HIGH INVENTORY AND REDUCED CASH FLOW NECESSITATING FURTHER BANK ACCOMMODATIONS (WHICH APPEARED FROM THE FACE OF THE BANK'S LETTER OF FEBRUARY 10TH, WOULD BE DIFFICULT TO OBTAIN) THE DECISION TAKEN BY THE RESPONDENT, ALTHOUGH PERHAPS NOT THE ONLY ONE THAT COULD HAVE BEEN TAKEN, IS IN OUR MIND, AN ACCEPTABLE EXPLANATION FOR ITS ACTIONS. WE HAVE ALSO CONSIDERED IN OUR DETERMINATION THAT THE RESPONDENT RETAINED IN ITS EMPLOY CERTAIN PERSONS WHO WERE UNION MEMBERS, AND, AS WELL, REQUESTED ON FEBRUARY 17TH PYSHER TO RETURN TO WORK, WHO WAS ALSO KNOWN BY THE RESPONDENT TO BE A UNION MEMBER. THE RESPONDENT DID NOT SET OUT TO HIRE NEW EMPLOYEES TO REPLACE THOSE AFFECTED BY THE LAY OFF, BUT RECALLED CERTAIN EMPLOYEES WHEN THEY REQUESTED TO RETURN TO WORK AND AS WORK WAS AVAILABLE. AGAIN WE POINT OUT THAT WE ARE NOT CALLED UPON TO PASS JUDGEMENT ON WHETHER THE RECALL OF THOSE LAID OFF WAS HANDLED BY THE RESPONDENT IN A FAIR OR REASONABLE BASIS BUT THE FACT THAT PERSONS WHO WERE RECALLED WERE KNOWN AT THAT TIME TO BE UNION MEMBERS DOES SUPPORT THE RESPONDENT'S POSITION THAT THE LAY OFF WAS FOR PROPER BUSINESS REASONS AND NOT TO DEFEAT THE UNION'S ORGANIZATION CAMPAIGN AS ALLEGED BY THE COMPLAINANT.

24. IT IS OUR CONCLUSION THAT THE EVIDENCE BEFORE US DOES NOT ESTABLISH ON THE BALANCE OF PROBABILITIES THAT THE AGGRIEVED PERSONS WERE DISCRIMINATED AGAINST BY THE RESPONDENT CONTRARY TO THE ACT. FOR ALL OF THE FOREGOING REASONS AND HAVING REGARD TO THE EVIDENCE AND THE ARGUMENTS PRESENTED BY COUNSEL, WE ARE NOT SATISFIED THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 AND 52 OF THE ACT AS ALLEGED BY THE COMPLAINANT.

25. THE COMPLAINT IS ACCORDINGLY DISMISSED.

DECISION OF BOARD MEMBER OLIVER HODGES:

AUGUST 28, 1968.

I AM NOT SATISFIED THAT THE SUDDEN TERMINATION OF THE AGGRIEVED PERSONS WOULD HAVE OCCURRED FOR ECONOMIC REASONS ALONE, AS CLAIMED BY THE RESPONDENT. THE TESTIMONY OF MULLER AS TO HIS AFFECTION FOR HIS EMPLOYEES, WHO HE REGARDED AS BROTHERS, SURELY COULD HAVE MOVED HIM TO FIND A REASONABLE WAY TO ADVISE EMPLOYEES OF MARKETING PROBLEMS OF WHICH HE HAD CONSIDERABLE WARNING. LETTERS OF TERMINATION DELIVERED BY HAND TO THE HOMES OF EMPLOYEES LATE SUNDAY NIGHT IS IN MY VIEW NOT THE ACT OF AN EXPERIENCED BUSINESSMAN DEALING WITH A TEMPORARY BUSINESS PROBLEM REQUIRING A REDUCED WORK FORCE. MULLER IS AN EXPERIENCED BUSINESSMAN.

A CAREFUL WEIGHING OF THE EVIDENCE LEADS ME TO FIND ON THE BALANCE OF PROBABILITIES THAT MULLER ACTED AS HE DID TO THWART THE ORGANIZATION ACTIVITIES OF HIS EMPLOYEES WHO WANTED A UNION.

I EMPHASIZE THE FOLLOWING EVIDENCE AS HAVING PARTICULAR SIGNIFICANCE CONCERNING THE UNION ACTIVITY OF CERTAIN TERMINATED PERSONS, AND THE PROBABLE KNOWLEDGE OF SUCH ACTIVITY BY THE EMPLOYER.

THERE IS THE EVIDENCE OF WALTER LYLE PYSHER OF A MEETING HE ATTENDED ON THURSDAY EVENING, FEBRUARY 8TH WITH INTERNATIONAL UNION OFFICIALS. A FURTHER MEETING THE FOLLOWING EVENING, FRIDAY, FEBRUARY 9TH, WAS ATTENDED BY PYSHER AND HENRI OLEJNIK AND ARRANGEMENTS WERE MADE FOR A MEETING OF ALL EMPLOYEES ON THE NEXT DAY, SATURDAY, FEBRUARY 10TH, WHEN WORK FINISHED AT NOON.

PYSHER TESTIFIED THAT HE SPOKE TO THREE EMPLOYEES BEFORE WORK SATURDAY MORNING IN THE PARKING LOT AND THAT HE SPOKE TO TWO OTHERS INSIDE THE PLANT, ARRANGING FOR THEM TO BE AT THE PARK MOTOR HOTEL AT NOON FOR THE PURPOSE OF SIGNING UP WITH THE UNION. THERE WERE 14 PRESENT AT THIS UNION MEETING.

PYSHER SAW MR. HENRY MULLER IN THE PLANT SATURDAY MORNING BUT HE DIDN'T KNOW WHERE, ALTHOUGH HE DID PLACE HENRY MULLER IN THE COMPANY OFFICE AT 11:55 A.M. WHEN HENRY MULLER TOLD HIM A LOAD DUE SATURDAY WOULD BE IN ON MONDAY.

AT THE UNION MEETING AT THE PARK MOTOR HOTEL, ATTENDED BY U.P.W.A. UNION REPRESENTATIVES, MR. PYSHER SAW EVERYONE PRESENT SIGN A UNION CARD. THESE PERSONS WERE:

STEWART LOWRY
HENRI OLEJNIK
ANDRAS BOGNAR
SANDRA PATTERSON
JOSEPH PARENT
MARTIN COSCARELLA
LYLE PYSHER
ROBERT CANPION

GABRIELLE MALONEY
KATHLEEN CORMIER
RUSSELL CAIL
LINDA MENZIES
WARREN AUBIE
WILHELM GOETZ

THE MEETING ENDED AT 1:00 P.M. AND PYSHER WENT HOME.

STEWART LOWRY, CALLED BY THE COMPLAINANT, TESTIFIED THAT HE WAS FIRST AWARE OF THE UNION ACTIVITY ON SATURDAY MORNING AND THAT HE ATTENDED THE UNION MEETING AND SIGNED A UNION CARD. HE WENT TO ST. CATHARINES IN THE AFTERNOON.

LOWRY SAID THAT HENRY MULLER CALLED HIM AROUND 6:00 P.M. AND INVITED HIM TO COME TO THE PLANT.

HE WENT TO THE PLANT AND WAS ASKED IF HE HAD HEARD ABOUT THE UNION TO WHICH HE ANSWERED "YES" AND SHOWED HIS UNION CARD TO HENRY MULLER. HE ARRANGED TO REPAY CERTAIN MONEY AT THIS TIME AND THEN LEFT.

IT IS SIGNIFICANT THAT THE CROSS EXAMINATION OF LOWRY BY RESPONDENT COUNSEL DID NOT TOUCH UPON TESTIMONY OF THE WITNESS WITH RESPECT TO HIS SHOWING MULLER HIS UNION CARD, OR HIS TESTIMONY THAT HE WAS ASKED WHETHER HE HAD HEARD ABOUT THE UNION.

ALTHOUGH RESPONDENT COUNSEL SUBSEQUENTLY RAISED THE QUESTION OF THE PARTICULARS OF THE COMPLAINANT'S CASE CONCERNING TELEPHONE CONVERSATIONS (ITEM "C" OF COMPLAINANT'S STATEMENT OF PARTICULARS), NO OBJECTION WAS MADE BY THE RESPONDENT AS TO THIS PART OF THE EVIDENCE AT THE TIME OF THE EXAMINATION IN CHIEF.

THE WITNESS LOWRY WAS PRESENT UNDER A SUBPOENA BY THE COMPLAINANT. THE WITNESS WAS A COMPANY SUPERVISOR EMPLOYED IN AN OPERATION UNAFFECTED BY THE LAY OFF. HIS TESTIMONY IS THEREFORE ALL THE MORE CREDIBLE.

THE TESTIMONY OF NIAGARA FALLS POLICE OFFICER, SERGEANT JAMES MALLOY, CALLED BY THE COMPLAINANT, RAISES THE QUESTION OF THE CONCERN OF HENRY MULLER FOR THE SAFETY OF HIS PLANT. WHY DID MULLER EMPLOY A POLICE OFFICER TO ATTEND AND GUARD HIS PREMISES SUNDAY EVENING IF HE HAD SIMPLY LAYED OFF PEOPLE FOR ECONOMIC REASONS? WHY DID HENRY MULLER TELEPHONE THE POLICE OFFICER AT THE PLANT AT 7:00 A.M. MONDAY MORNING AND ASK, AS MALLOY TESTIFIED, "HOW ARE THINGS"? WHAT DID MR. MULLER EXPECT - AND WHY? MY CONCLUSION IS THAT MULLER KNEW ALL ABOUT THE SUCCESS OF THE UNION ORGANIZING ACTIVITY, AND THOUGHT THAT HE WAS IN FOR SOME KIND OF REPRISAL AS A RESULT OF THE TERMINATION LETTER TO EMPLOYEES HE AND OTHERS DELIVERED SUNDAY AFTERNOON AND EVENING.

THE TESTIMONY OF COMPLAINANT WITNESS, HENRI OLEJNIK, A FOREMAN AND LEAD MAN IN THE BONING DEPARTMENT IS THAT HE MET WITH U.P.W.A. UNION REPRESENTATIVES AT THE PARK MOTOR HOTEL ON FRIDAY EVENING, FEBRUARY 9TH, ALONG WITH PYSHER. ARRANGEMENTS WERE MADE FOR A MEETING OF ALL EMPLOYEES AFTER WORK AT NOON THE NEXT DAY, SATURDAY, FEBRUARY 10TH.

OLEJNIK WORKED SATURDAY MORNING ON THE BONING LINE, AS USUAL. HE TRIED TO ARRANGE FOR ALL PEOPLE TO GET TO THE PARK MOTOR HOTEL FOR THE NOON MEETING. HE TALKED TO HALF OF THE EMPLOYEES HIMSELF, AND LEFT THE PLANT AT 12:15 P.M.

OLEJNIK WENT DIRECTLY TO THE MEETING, TAKING AS MANY EMPLOYEES WITH HIM AS HE COULD. HE INTRODUCED THE PEOPLE THERE ALL AROUND. BILL GOETZ, WHO HE MET ON THE WAY OUT OF THE PLANT, WAS ONE OF THOSE HE TOOK TO THE MEETING.

OLEJNIK TESTIFIED THAT HE SIGNED A UNION CARD AT THE MEETING. HE SPOKE TO HENRY MULLER AFTER THE MEETING AT 2:00 P.M. WHEN MULLER PHONED HIM DURING LUNCH, CONCERNING A TEST.

THE NEXT DAY, SUNDAY, OLEJNIK WAS AWAY FROM HIS HOUSE FOR A TIME AND ON HIS RETURN AT 10:00 P.M., HE FOUND A LETTER WHICH MULLER HAD LEFT FOR HIM CONCERNING THE LAY OFF. OLEJNIK THOUGHT HE WAS FIRED.

AFTER HE HAD READ THE LETTER HE DROVE ALONG TO MULLER'S HOUSE WHERE HE LEARNED FROM THE SECOND YOUNGEST SON THAT MULLER WAS AT THE PLANT. OLEJNIK WENT TO THE PLANT WHERE HE SAW MULLER AND ASKED FOR MORE INFORMATION CONCERNING THE CONTENT OF THE LETTER.

MULLER SAID THAT THERE WERE FOUR REASONS WHICH THEY DISCUSSED. THESE REASONS SEEMED ODD TO OLEJNIK BECAUSE HE HAD BEEN WORKING 1/2 TO 3/4 HOURS OF OVERTIME EACH DAY.

OLEJNIK RECOUNTED AN EXCHANGE THAT WOUND UP THEIR CONVERSATION OLEJNIK HAVING REMARKED ALONG THE LINES THAT IT LOOKED LIKED HE WAS FIRED. MULLER SAID THAT "YES, THAT MEANS YOU ARE FIRED". THE WITNESS, OLEJNIK THEN SAID, "I THINK I NEVER WORK FOR YOU", AND MULLER SAID "I HOPE NOT".

OLEJNIK TESTIFIED THAT MULLER HAD FIRST MET HIM IN TORONTO AT ANOTHER PLANT WHERE HE WAS A KEY MAN. MULLER OFFERED HIM BETTER CONDITIONS AND INVITED HIM TO COME TO NIAGARA FALLS. HE DID SO AND WAS HIRED 2 1/2 YEARS AGO. AT THE TIME OF TERMINATION HE WAS LEAD MAN IN THE BONING DEPARTMENT.

OLEJNIK SAID WORK HAD BEEN STEADY THROUGH THE YEAR AND MULLER HAD HIRED TWO NEW PEOPLE INCLUDING A YOUNG MAN WHO HAD BEEN FIRED AND THEN REHIRED. THERE HAD BEEN NO PREVIOUS LAY OFFS.

MARTIN COSCARELLA WAS HIRED IN FEBRUARY THIS YEAR. HE ATTENDED THE SATURDAY NOON UNION MEETING AND JOINED THE UNION THERE.

HE WAS TELEPHONED BY HENRY MULLER SUNDAY NIGHT AT 11:45 P.M. HE WAS IN BED. MULLER TOLD HIM THINGS WERE SLOW AND THAT A LAY OFF WAS TO BE MADE BUT THAT HE WAS NOT THE ONLY ONE. HE DID NOT GET A LETTER.

HE WAS FIRST TOLD BY MULLER THAT HE COULD PICK UP VACATION PAY, BUT HE HEARD A BACKGROUND FEMALE VOICE SAY "NO, NO, NO, WE'LL MAIL IT", AND MR. MULLER THEN SAID TO COSCARELLA, "WE WILL MAIL IT THEN".

HE WENT TO THE PLANT THE NEXT MORNING AND AFTER SEEING PICKETS AND TWO POLICE OFFICERS, HE WENT AND REGISTERED FOR UN-EMPLOYMENT INSURANCE.

MULLER CALLED HIM "TWO WEEKS AGO", (HIS TESTIMONY WAS GIVEN ON TUESDAY, APRIL 16 TWO WEEKS EARLIER WAS TUESDAY APRIL 2) IN THE MORNING AND ASKED "DO YOU FEEL LIKE WORKING"? HE PUNCHED IN AT 8:30 A.M. AND CUT BONES.

AT 2:00 P.M. HE STARTED TO HELP AUDY CUT MEAT. HENRY MULLER SPOKE TO THE WITNESS AND SAID "IF THE UNION WAS IN, YOU WOULD BE SENT HOME - DOING WRONG JOB - COULD LAY YOU OFF". THE WITNESS SAID HE REPLIED "HAVE TO HIRE ME BACK FIRST". HE DID NOT WORK SINCE.

I FIND THE REMARKS OF MULLER TO COSCARELLA OF INTEREST, SINCE A NEGATIVE ATTITUDE TOWARDS THE UNION IS IMPLIED THEREBY. THIS GOES TO SUPPORT THE INFERENCE OF OPPOSITION TO THE UNION THAT IS BEHIND THE SEVERAL SUDDEN TERMINATIONS.

I BELIEVE THE TESTIMONY OF LOWRY RATHER THAN THE TESTIMONY OF MULLER. IN MY OPINION THE MYSTERIOUSLY MISSING WITNESS WILHELM GOETZ SHOULD BE SUBPOENAED BY THE BOARD. HIS APPEARANCE WAS SOUGHT BY THE COMPLAINANT, BUT HE COULD NOT BE LOCATED DURING THE TIME THE SEVERAL HEARINGS WERE HELD.

THE BOARD RECENTLY TOOK LIKE ACTION IN THE PARK LAUNDRY CO. LIMITED CASE, O.L.R.B. FILE NO. 14362-67-R, AUGUST 19TH, 1968, TO SEEK RESOLUTION OF CONFLICTING EVIDENCE. IN THAT CASE THE PERSON SUBPOENAED HAD NOT BEEN CALLED BY EITHER PARTY. IN THE INSTANT CASE THE DISAPPEARANCE OF THE WITNESS GOETZ OCCURRED AFTER HE HAD BEEN INTERVIEWED BY A BOARD FIELD OFFICER, BUT WHEN CONTACTED BY A UNION REPRESENTATIVE, HE ADVISED THAT HE WAS LEAVING TOWN AND DID NOT PLAN TO ATTEND AS A WITNESS. A SUBPOENA WAS ISSUED BUT AN ALMOST CONTINUOUS SEARCH FOR SOME 20 HOURS FAILED TO FIND HIM. HIS EVIDENCE COULD BE OF VITAL INTEREST TO THE BOARD.

MY FINDING ON THE EVIDENCE BEFORE ME IS THAT THE EMPLOYER IS IN VIOLATION OF SECTIONS 50 AND 52 OF THE ACT IN THAT ALL OF THE AGGRIEVED PERSONS WERE TERMINATED WITH THE INTENT TO INTERFERE IN THE FORMATION OF A TRADE UNION.

I DIRECT REINSTATEMENT AND FULL COMPENSATION OF ALL EMPLOYEES TERMINATED BY THE LETTERS DELIVERED TO THEIR HOMES BY THE COMPANY.

14269-67-U: TORONTO NEWSPAPER GUILD, LOCAL 87 (COMPLAINANT) V.
PETERBOROUGH EXAMINER COMPANY LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
F. W. MURRAY AND A. MAIN.

APPEARANCES AT THE HEARING: J. SACK FOR THE APPLICANT AND F. G. HAMILTON AND W. J. GARNER FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 2, 1968.

1. THIS IS AN APPLICATION FOR RELIEF MADE PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON CHARLES ALBERT RUPPLE WAS DEALT WITH BY THE RESPONDENT CONTRARY TO SECTION 50 OF THE ACT AND REQUESTS THAT HE BE REINSTATED IN HIS EMPLOYMENT WITH COMPENSATION FOR WAGES AND BENEFITS LOST. THE RESPONDENT DENIES THE COMPLAINT.

2. CHARLES ALBERT RUPPLE, THE AGGRIEVED PERSON, TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT AS A REPORTER SINCE OCTOBER 1967. PREVIOUSLY HE HAD EXPERIENCE WITH THE SENTINIAL REVIEW AT WOODSTOCK AND THE TORONTO TELEGRAM. HE WAS HIRED BY MR. CRAW, EXECUTIVE EDITOR, AND WAS RESPONSIBLE TO THE CITY EDITOR, MR. PORTEOUS AND NEWS EDITOR, MR. BILLINGS. HE HAD BEEN A MEMBER OF THE GUILD FOR ABOUT 3 YEARS AND WAS ACTIVE IN THE ORGANIZATION OF THE GUILD AT THE RESPONDENT'S PREMISES. AFTER LEARNING OF THE SALE OF THE RESPONDENT'S BUSINESS TO THE THOMPSON NEWSPAPER CHAIN ON FEBRUARY 7TH, 1967, RUPPLE THOUGHT THE OTHER EMPLOYEES WOULD BE SUSCEPTIBLE TO ORGANIZATION OF A GUILD AND TELEPHONED MR. DOBSON THE LOCAL REPRESENTATIVE OF THE COMPLAINANT. DOBSON IN EVIDENCE SAID THAT THERE WERE TWO CALLS FROM RUPPLE THAT DAY. RUPPLE HAD TOLD HIM OF THE PENDING SALE OF THE NEWSPAPER AND THAT HE FELT THE EMPLOYEES WOULD BE RIPE FOR ORGANIZING. DOBSON THEN ARRANGED TO GO TO PETERBOROUGH ON FEBRUARY 9TH FOR THE PURPOSE OF ORGANIZING. A MEETING WAS HELD AT THE HOLIDAY INN AT PETERBOROUGH ON THAT DAY WHERE CERTAIN OF THE RESPONDENT'S EMPLOYEES SIGNED APPLICATION FOR MEMBERSHIP CARDS IN THE GUILD AND SOME SIGNED THE FOLLOWING SATURDAY AND SUNDAY. DOBSON STATED THAT RUPPLE WAS THE MAIN ORGANIZER FOR THE EMPLOYEES. AS A RESULT OF THIS MEETING AN APPLICATION FOR CERTIFICATION WAS MADE ON FEBRUARY 17TH, 1968.

3. ON WEDNESDAY, FEBRUARY 7TH, THE ANNOUNCEMENT OF THE PENDING SALE OF THE NEWSPAPER WAS MADE AND AFTER TALKING TO DOBSON, RUPPLE AND A NUMBER OF THE OTHER REPORTERS WENT TO THE KING GEORGE HOTEL DURING WHICH TIME THE GUILD WAS DISCUSSED AS WELL AS THE PENDING TAKE-OVER. PORTEOUS WAS AT THAT MEETING AND RUPPLE SAID THAT HE MENTIONED THE FACT THAT HE WAS A GUILD MEMBER AND THAT HE WOULD BE SETTING UP A MEETING WITH A REPRESENTATIVE OF THE GUILD AS SOON AS POSSIBLE. RUPPLE STATED THAT PORTEOUS WAS OPPOSED TO THE GUILD. RUPPLE ON THE FOLLOWING MORNING ADVISED THE EDITORIAL STAFF OF THE MEETING AT THE HOLIDAY INN. RUPPLE SAID THAT HE WAS THE MAIN ORGANIZER FOR THE EMPLOYEES AND WAS ELECTED PROVISIONAL CHAIRMAN OF THE UNIT. ON THE DAY OF THE MEETING CRAW CALLED RUPPLE INTO HIS OFFICE AND COMPLAINED ABOUT ONE OF HIS COURT STORIES AND HE SAID THAT HE WAS GOING TO REVIEW RUPPLE'S WORK FOR THE NEXT MONTH TO SEE IF HE SHAPED UP. RUPPLE SAID HE WAS SURPRISED AS NO ONE HAD PREVIOUSLY SAID THAT HE WAS SLIPPING BADLY. RUPPLE CLAIMED THAT CRAW HAD NOT SAID ANYTHING ABOUT DISCHARGE AT THAT MEETING. CRAW HAD COMPLAINED ONCE BEFORE ABOUT AN ELECTION STORY, HOWEVER, HE HAD NEVER TOLD RUPPLE THAT HIS COPY WAS BAD OR THAT HE HAD TO IMPROVE. THE NEWS EDITOR OR THE CITY EDITOR HAD NEVER MENTIONED DISCHARGE TO HIM. THEY HAD ONLY COMMENTED ON ERRORS IN HIS COPIES.

4. ON THE WEDNESDAY FOLLOWING THE DATE THE APPLICATION FOR CERTIFICATION WAS MADE, RUPPLE AND BARRETT ANOTHER EMPLOYEE OF THE RESPONDENT, ADVISED CRAW OF THE APPLICATION BY THE GUILD. CRAW HAD THEN SAID THAT HE WAS SURPRISED AT RUPPLE BECAUSE HE WAS ON PROBATION AND THAT THE NEWS AND CITY EDITORS HAD RECOMMENDED HIS DISCHARGE BUT CRAW HAD NOT AGREED TO THIS. RUPPLE SAID THAT CRAW TOOK THE APPLICATION AS A PERSONAL AFFRONT. RUPPLE SAID THAT GENERALLY THERE IS A THREE MONTH PROBATION PERIOD FOR EMPLOYEES ON A NEWSPAPER AND HE HAD PASSED THAT TIME WITH THE RESPONDENT AND HAD NEVER BEEN TOLD OF ANOTHER PROBATION PERIOD. RUPPLE FURTHER SAID THAT WHEN HE WAS HIRED HE WAS TOLD THAT HE WOULD RECEIVE A \$5.00 PER WEEK RAISE AT THE END OF 2 MONTHS. THIS RAISE PUT HIM AT THE TOP RATE FOR REPORTERS. HE HAD IN THE LATTER HALF OF JANUARY 1968 ALSO APPLIED FOR A SOUTHAM FELLOWSHIP AND CRAW SIGNED THE APPLICATION AND ATTACHED A LETTER OF REFERENCE WITH IT. HE SAID THAT AFTER FEBRUARY 7TH THE BEHAVIOUR OF THE STAFF CHANGED TOWARDS HIM AND HIS COPY WAS CRITICIZED BY BILLINGS AND CRAW ON FEBRUARY 27TH. CRAW HAD ALSO OBJECTED TO SUBPOENAS BEING ISSUED FOR CERTAIN EMPLOYEES WITH RESPECT TO THE HEARING FOR THE APPLICATION FOR CERTIFICATION AT THE LABOUR RELATIONS BOARD. AFTER THAT CRAW HAD NOT SPOKEN TO RUPPLE AND HE FELT THAT HE WAS BEING DEALT WITH MUCH MORE SEVERELY THAN BEFORE FEBRUARY 7TH. ON MARCH 7TH HE WAS NOT GIVEN ANY WORK AND WAS ADVISED BY BILLINGS IN THE MORNING THAT CRAW WANTED TO SEE HIM AFTER 4:00 P.M. AT THAT MEETING BILLINGS AND CRAW WERE PRESENT AND CRAW ADVISED RUPPLE THAT HIS WORK HAD NOT IMPROVED AND HE WAS DISMISSED. CRAW SAID ALSO THAT HE WAS WITHDRAWING HIS SUPPORT TO RUPPLE IN THE SOUTHAM FELLOWSHIP.

5. IN CROSS EXAMINATION, RUPPLE SAID THAT THE LETTER OF FEBRUARY 17TH FROM THE RESPONDENT TO ITS EMPLOYEES WAS OBJECTED TO BY THE GUILD AND THAT HE AND BARRETT HAD COMPLAINED BUT THAT BARRETT DID MOST OF THE TALKING. RUPPLE HAD PUT HIS NAME IN THE ASSIGNMENT BOOK THAT HE WOULD BE OFF WORK ON THE DATE OF THE HEARING BUT HAD NOT BEEN SUBPOENAED UNTIL THE TUESDAY NIGHT PRIOR TO THE HEARING AT HIS OWN REQUEST. RUPPLE WAS NEVER TOLD ABOUT THE POSSIBILITY THAT HE WOULD BE FIRED NOR THAT HIS JOB WAS IN DANGER UNTIL FEBRUARY 14TH WHEN TWO PEOPLE HAD SAID THAT HIS DISCHARGE WAS RECOMMENDED. HE DID NOT EXPECT TO BE DISCHARGED ON MARCH 7TH HOWEVER HE ADMITTED THAT HE WAS SURPRISED ONLY THAT CRAW HELD THE MEETING AS TO HIS DISCHARGE AFTER HIS WORKING HOURS. HE DID ADMIT THAT ON FEBRUARY 14TH HE WAS WARNED BY CRAW THAT HE HAD TO "PULL UP HIS SOCKS" AND THAT CRAW WOULD BE OBSERVING HIS WORK. PRIOR TO THAT DATE, ON FEBRUARY 9TH, IN THE MORNING HE HAD MET WITH CRAW AND TOLD THAT HIS WORK WAS NOT SATISFACTORY AND THAT HE WOULD LOOK OVER RUPPLE'S WORK FOR A MONTH. IT WAS ON FEBRUARY 14TH, HOWEVER, THAT CRAW HAD TOLD RUPPLE THAT HE WAS ON PROBATION. RUPPLE CLAIMED WITH RESPECT TO THE PERIOD OF PROBATION THAT HE DID NOT CONSIDER THE ONE MONTH FOLLOWING FEBRUARY 9TH BUT ONLY OF THE THREE MONTH PERIOD AFTER HE WAS HIRED. RUPPLE SAID THAT THE ERRORS ON HIS COPY WERE THE NORMAL ERRORS EXPECTED IN HIS TYPE OF WORK. HE CLAIMED THAT HE WAS TOLD WHEN HE WAS HIRED THAT HE WOULD GET A \$5.00 PER WEEK RAISE PROVIDING HIS WORK WAS SATISFACTORY.

6. RUPPLE HAD NO SOURCE OF INCOME UP TO THE DATE OF THE HEARING. HE HAD APPLIED FOR UNEMPLOYMENT INSURANCE BUT WAS NOT ABLE TO OBTAIN THAT ASSISTANCE AS HE HAD NOT BEEN PAYING INTO THE FUND. HE HAD ATTEMPTED TO GET OTHER WORK AND HAD REGISTERED WITH THE MANPOWER OFFICE. FOLLOWING THE RESPONDENT'S EVIDENCE, HOWEVER, AT THE CONTINUATION OF THE HEARING ON MAY 3RD, RUPPLE STATED THAT HE WAS ATTENDING SCHOOL DURING THE DAY TO GET HIS GRADE 12 CERTIFICATE IN CERTAIN SUBJECTS AND HAD STOPPED LOOKING FOR A JOB AFTER THE SECOND WEEK IN APRIL. HE HAD TAKEN DEPARTMENTAL TESTS AND HIS APPTITUDE INDICATED "VERY HIGH CLERICAL". ALTHOUGH HIS EVIDENCE WAS CONFUSED IN THIS AREA, APPARENTLY HE WANTED TO PREPARE HIMSELF TO GO TO UNIVERSITY IN THE FALL OF THIS YEAR BUT ALSO MAINTAINED THAT HS WISHED TO BE REINSTATED IN HIS FORMER POSITION WITH THE RESPONDENT.

7. MR. AXEL SJOBERG TESTIFIED ON BEHALF OF THE COMPLAINANT THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT AS A GENERAL REPORTER SINCE NOVEMBER 1967. THE EMPLOYEES HEARD OF THE THOMPSON TAKE-OVER ON FEBRUARY 7TH AND A GROUP OF THE REPORTERS MET INFORMALLY AFTER 4:00 THAT DAY. PORTEOUS, THE CITY EDITOR, WAS ALSO THERE. THE GUILD ORGANIZATION WAS DISCUSSED AS WELL AS THE TAKE-OVER AND THE FEELING OF THE GROUP WAS THAT EMPLOYEES NEEDED THE PROTECTION OF THE GUILD IN DEALING WITH THOMPSON. RUPPLE MENTIONED THE GUILD AND THAT HE WAS THE ONLY MEMBER OF IT THERE AND SUGGESTED THAT THEY SEE WHAT COULD BE DONE AS TO ORGANIZING THE GUILD. PORTEOUS DID NOT LIKE THE IDEA AND SUGGESTED THAT A GUILD SHOP WAS AN UNHAPPY PLACE. RUPPLE TOLD HIM ABOUT THE SUBSEQUENT MEETING ON FRIDAY WHICH SJOBERT ATTENDED.

HE SAID THAT RUPPLE WAS THE MAIN ORGANIZER. NO ONE ELSE HAD BEEN DISCHARGED BY THE RESPONDENT SINCE HE HAD BEEN EMPLOYED.

8. IN REPLY TO THE COMPLAINT, THE RESPONDENT OFFERED THE EVIDENCE OF BILLINGS, PORTEOUS AND CRAW. THE EVIDENCE IN CHIEF AND CROSS EXAMINATION OF EACH OF THESE WITNESSES WAS LENGTHY AND DETAILED AND WE HAVE THEREFORE ONLY SET OUT THE SALIENT ASPECTS. WILLIAM FEDERICK BILLINGS IS THE NEWS EDITOR FOR THE RESPONDENT AND HAD BEEN EMPLOYED WITH THE RESPONDENT IN VARIOUS CAPACITIES FOR ABOUT 10 YEARS. BILLINGS SAID THAT HE COMPLAINED ABOUT RUPPLE'S WORK TO CRAW ON TWO OCCASIONS PRIOR TO THE NEW YEAR (1968) AND HAD RECOMMENDED HIS DISMISSAL ON FEBRUARY 9TH AND AGAIN ONE DAY BEFORE HE WAS DISMISSED. BILLINGS WAS TOLD BY CRAW ON FEBRUARY 9TH THAT HE HAD WARNED RUPPLE THAT HE HAD TO SHOW WHAT HE COULD DO IN THE NEXT MONTH OTHERWISE HE WOULD BE DISMISSED. BILLINGS THEN APPRAISED RUPPLE'S WORK FOR FOUR WEEKS AND HIS WORK DID NOT IMPROVE. BILLINGS SAID HE RECOMMENDED RUPPLE'S DISMISSAL BECAUSE OF INCOMPETENCE, INABILITY TO WRITE, CARELESSNESS IN FACTS, BAD SPELLING, AND THAT HE SERIOUSLY IMPEDED THE EDITORS INVOLVED AS HE COULD ONLY BE ASSIGNED CERTAIN JOBS WITHIN HIS CAPABILITIES THUS PUTTING AN UNFAIR WORK LOAD ON THE REST OF THE STAFF. RUPPLE DID NOT SHOW ANY SIGN OF IMPROVEMENT AFTER FEBRUARY 9TH. A NUMBER OF EXAMPLES OF RUPPLE'S WORK WAS SUBMITTED TO THE BOARD AND BILLINGS STATED THAT HE HAD GONE OVER SOME OF THE STORIES WITH HIM AND HAD HIM REWRITE THEM AFTER POINTING OUT THE ERRORS. HE SAID THAT HARDLY A PARAGRAPH THAT RUPPLE WROTE WOULD ESCAPE ATTENTION WHICH CAUSED THE EDITORS IRRITATION, WHICH HAD BEEN BUILDING UP PRIOR TO FEBRUARY 9TH. PORTEOUS HAD DRAWN THIS TO BILLING'S ATTENTION IN DECEMBER AND HE COMPLAINED AGAIN ABOUT RUPPLE'S WORK IN JANUARY. BILLINGS MADE AN ASSESSMENT AT THAT TIME THAT IF RUPPLE DID NOT IMPROVE HE WOULD RECOMMEND HIS DISMISSAL. BILLINGS SAID THAT HE HAD NO KNOWLEDGE OF UNION ACTIVITY ON FEBRUARY 9TH. HE FIRST KNEW OF IT WHEN TOLD BY CRAW ON THE 14TH. WHEN RUPPLE WAS HIRED HE WAS PLACED ON THE POLICE BEAT AND REMAINED THERE FOR ONE MONTH AND THEN HE WAS REMOVED BECAUSE OF HIS INABILITY TO WRITE, TO THE REWRITE DEPARTMENT WHICH IS CONSIDERED TO BE A TRAINING GROUND FOR JUNIOR REPORTERS. HE REMAINED THERE UNTIL THE MONTH OF DECEMBER AND WAS THEN CALLED IN TO SPELL OFF OTHER PERSONS ON GENERAL ASSIGNMENTS INCLUDING MAGISTRATES COURT. THIS WAS USUALLY REGARDED AS A DRUDGE JOB WITH A FORMULA TYPE OF WRITING AND BILLINGS SAID HIS WORK FOUND A LEVEL OF ACCURACY THERE BUT HIS PRESENTATION SHOWED NO IMPROVEMENT. BILLINGS BELIEVED THAT RUPPLE WOULD HAVE DIFFICULTY WITH GRADE 8 COMPOSITION AND EXPRESSED SURPRISE THAT HE HAD A GRADE 11 CERTIFICATE IN ENGLISH WHEN CONFRONTED WITH THIS. THE RESPONDENT HAD A HISTORY OF DISCHARGING VERY FEW EMPLOYEES, IT WAS CONSIDERED A TRAINING PAPER AND MANY REPORTERS WENT ON TO OTHER NEWSPAPERS FROM THERE. BILLINGS HAD BEEN ASKED BY CRAW TO ENDORSE RUPPLE'S APPLICATION FOR THE SOUTHEM FELLOWSHIP IN JANUARY WHICH HE DECLINED TO DO BUT CRAW DID SO ON HIS OWN VOLITION. UP TO FEBRUARY 9TH BILLINGS DID NOT REGULARLY EDIT RUPPLE'S WORK, THIS WAS DONE BY PORTEOUS, BUT HE DID EDIT ABOUT 5 -

10% OF HIS WORK, ON A WEEKLY BASIS. HE SAID THERE IS AN ELEMENT OF CORRECTION IN THE WORK OF OTHER REPORTERS BUT IT DOES NOT AMOUNT TO REWRITING OF THEIR MATERIAL. AFTER FEBRUARY 9TH, BILLINGS DID NOT STEP UP THE REWRITING OF RUPPLE'S WORK BUT TRIED TO MAKE A FAIR ATTEMPT TO ASSESS IT, BUT HIS WORK AFTER FEBRUARY 9TH WAS THE SAME AS BEFORE THAT DATE. IN DECEMBER AND IN EARLY JANUARY BILLINGS SAID THAT HE HAD TOLD CRAW THAT RUPPLE'S WORK WAS UNSATISFACTORY AND HE DID NOT APPEAR TO HAVE THE ABILITY TO IMPROVE. BILLINGS SAID THAT RUPPLE'S RAISE WAS ARRANGED ON THE DAY HE WAS HIRED AND WRITTEN IN ON HIS APPLICATION FORM SO THAT THE RESPONDENT GAVE HIM THE RAISE WHICH HE WAS PROMISED. CRAW TOLD BILLINGS THAT THE LETTER HE SENT WITH THE SOUTHAM FELLOWSHIP APPLICATION WAS TO THE EFFECT THAT RUPPLE WAS A GOOD LEG-MAN, WAS WILLING AND RELIABLE (MEANING PUNCTUAL); THAT HE GOT HIS EXPERIENCE BY GETTING FACTS ON THE TELEPHONE AND THAT THE GENERAL FEELING WAS THAT HIS ABILITY TO WRITE WAS NOT GOOD ENOUGH FOR HIM TO APPLY. BILLINGS MAINTAINED THAT THE UNION HAD NOTHING TO DO WITH RUPPLE'S DISCHARGE, RATHER THAT HE HAD CONVINCED CRAW WHO HAD HAD COMPASSION IN DEALING WITH RUPPLE, THAT RUPPLE WAS INCOMPETENT. HE DID NOT KNOW THAT RUPPLE WAS ADVISING OTHER REPORTERS ON FEBRUARY 8TH OF THE MEETING ON THE 9TH AND PORTEOUS HAD ONLY TOLD HIM OF THE MEETING ON THE 7TH, ON FEBRUARY 14TH, THE DAY THAT CRAW AND BARRETT MADE THE ANNOUNCEMENT THAT THE APPLICATION FOR CERTIFICATION HAD BEEN MADE. AFTER THIS DATE HE DISCUSSED THE GUILD WITH CRAW WHO WAS OPPOSED TO IT BUT THEY NEVER TALKED ABOUT RUPPLE'S INVOLVEMENT IN IT ANY MORE THAN ANY OTHER EMPLOYEE. BARRETT DID MOST OF THE TALKING ABOUT THE GUILD AND HE IS STILL EMPLOYED THERE.

9. ALAN BRUCE PORTEOUS TESTIFIED THAT HE IS THE NEWS EDITOR FOR THE RESPONDENT AND HAD BEEN EMPLOYED THERE FOR OVER THREE YEARS. HE HAD BEEN INVOLVED WITH RUPPLE'S DISCHARGE IN THAT HE WAS OF THE OPINION THAT RUPPLE'S ABILITY TO WRITE WAS NOT UP TO STANDARD AND HAD SPOKEN TO THE NEWS EDITOR ON FEBRUARY 9TH AND SUGGESTED THAT RUPPLE BE LET GO. HE SAID THAT THEY KNEW OF RUPPLE'S QUALITY BEFORE THAT DATE AND TO SOME EXTENT BEFORE CHRISTMAS. PORTEOUS HAD NOT TALKED TO CRAW ABOUT RUPPLE PRIOR TO CHRISTMAS BUT HAD TALKED TO BILLINGS TWO WEEKS AFTER HE STARTED AND AGAIN ON TWO OTHER OCCASIONS BETWEEN THEN AND THE END OF NOVEMBER. AFTER FEBRUARY 9TH PORTEOUS REVIEWED RUPPLE'S WORK AND SAID THERE WAS NO APPRECIABLE CHANGE IN THE QUALITY OF HIS WORK. WITHIN TWO WEEKS FROM THE DATE HE WAS HIRED PORTEOUS HEARD OF COMPLAINTS ABOUT RUPPLE'S CONDUCT ON THE POLICE BEAT AND THIS WAS REPORTED TO THE NEWS EDITOR AND EXECUTIVE EDITOR AT A STAFF MEETING. LATE IN NOVEMBER OR EARLY DECEMBER RUPPLE WAS TAKEN OFF THIS BEAT AND PLACED ON THE RE-WRITES AND LATER WAS ASSIGNED TO COURT ON A DAILY BASIS. EARLY IN DECEMBER, RUPPLE HAD BEEN ASSIGNED TO EXAMINE AND WRITE OF MUNICIPAL BY-LAWS OF WHICH THE PUBLIC WERE NOT GENERALLY AWARE. PORTEOUS SAID HE COULD NOT UNDERSTAND THE STORY WRITTEN BY RUPPLE ON THIS SUBJECT. HE TRIED TO REWRITE IT BUT GAVE UP AS BEING BEYOND SALVAGE. THAT STORY WAS NOT USED. THERE WERE OTHER INSTANCES

IN RUPPLE'S WORK BEFORE FEBRUARY 9TH THAT PORTEOUS HAD TO DEAL WITH AND TO REWRITE AND HE SAID THAT THE "STRAW THAT BROKE THE CAMEL'S BACK" WAS A STORY SUBMITTED LATE FOR PUBLICATION WHICH IN THE INTERESTS OF TIME PORTEOUS HAD TO REWRITE. PORTEOUS CONSIDERED THAT RUPPLE HAD NOT IMPROVED WITHIN THE 30 DAY PERIOD ALLOWED TO HIM BY CRAW. PORTEOUS STATED THAT HE FIRST BECAME AWARE OF THE GUILD ON ON FEBRUARY 12TH WHEN HE WAS TELEPHONED AT HOME AND ASKED TO GO TO A MEETING CONCERNING THE GUILD. ON THE 14TH, HE DISCUSSED THE GUILD WITH BILLINGS AND CRAW AND TOLD THEM THEN WHAT HAD TAKEN PLACE ON THE 12TH BUT DID NOT REVEAL THE NAME OF THE CALLER WHO WAS IN FACT GEORGE BARRETT. AS TO THE MEETING OF THE EMPLOYEES ON FEBRUARY 7TH THERE HAD BEEN A GENERAL DISCUSSION OF THE GUILD BUT HE WAS NOT UNDER ANY IMPRESSION THAT A GUILD WOULD BE FORMED IN PETERBOROUGH. HE DID NOT RECALL HEARING THAT RUPPLE WAS A MEMBER OF THE GUILD NOR THAT HE WOULD GET IN TOUCH WITH THE GUILD. HE DID NOT HEAR ANYTHING ON THURSDAY ABOUT THE MEETING WHICH WAS HELD ON FRIDAY THE 9TH OF FEBRUARY.

10. GEORGE WILSON CRAW TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT FOR 42 YEARS AND HAD BEEN THE EXECUTIVE EDITOR SINCE 1943. HE HIRED RUPPLE AT A SALARY OF \$115.00 PER WEEK AND NOTED ON THE APPLICATION THE RAISE OF \$5.00 PER WEEK WHICH WAS SUBSEQUENTLY GIVEN TO RUPPLE. ON FEBRUARY 9TH BOTH THE CITY EDITOR AND THE NEWS EDITOR ADVISED HIM THAT RUPPLE COULD NOT ADEQUATELY REPORT ASSIGNMENTS GIVEN TO HIM. AS A RESULT HE HAD TALKED TO RUPPLE IN HIS OFFICE THAT DAY AND TOLD HIM THAT THE EDITORS HAD RECOMMENDED HIS DISMISSAL BUT THAT HE WOULD GIVE HIM ONE MONTH TO "PULL UP HIS SOCKS". RUPPLE, IN DISCUSSING WITH CRAW ABOUT A STORY WHICH HE HAD WRITTEN, HAD SAID THAT HE THOUGHT HE HAD BEEN CARELESS. CRAW SAID THAT HE WANTED TO GIVE RUPPLE EVERY OPPORTUNITY TO IMPROVE HIMSELF AND HE TOLD BILLINGS OF HIS CONVERSATION WITH RUPPLE THAT DAY. CRAW STATED THAT HE DID NOT KNOW OF ANY GUILD ACTIVITY ON FEBRUARY 9TH AND JUST BECAME AWARE OF IT ON FEBRUARY 14TH AFTER BARRETT AND RUPPLE SO ADVISED HIM. HE SAID THAT BARRETT DID ALL THE TALKING AT THAT MEETING AND THAT HE HAD SAID TO RUPPLE THAT HE WAS SURPRISED AT HIM BECAUSE HE WAS ON PROBATION. CRAW ADMITTED THAT HE WAS OPPOSED TO THE GUILD AND WAS STUNNED WHEN HE LEARNED OF THE APPLICATION FOR CERTIFICATION. ON FEBRUARY 19TH CRAW MADE A MEMO OF THE CONVERSATION THAT HE HAD HAD WITH RUPPLE ON FEBRUARY 9TH, WHICH HE SIGNED AND HAD BILLINGS AND PORTEOUS INITIAL. THIS WAS A RESULT OF MR. GARNER'S REQUEST AFTER FEBRUARY 14TH, THAT HE PUT EVERYTHING IN WRITING. NOTWITHSTANDING THE COMPLAINTS BY BOTH BILLINGS AND PORTEOUS PRIOR TO FEBRUARY 9TH OF RUPPLE'S WORK, AND OVER THE OBJECTION OF BILLINGS, CRAW IN JANUARY SIGNED RUPPLE'S APPLICATION FOR A SOUTHAM FELLOWSHIP AND ATTACHED A LETTER TO THE APPLICATION TO THE EFFECT THAT HE WAS A GOOD LEG-MAN BUT HIS WRITING DID NOT MEET THE STANDARDS OF THE EXAMINER. CRAW SAID THAT IT WAS RARE TO DISCHARGE AN EMPLOYEE OF THE RESPONDENT AND HE HAD ONLY DONE SO IN ABOUT 6 CASES IN 40 YEARS AND HE INSISTED THAT RUPPLE BE GIVEN EVERY OPPORTUNITY TO IMPROVE. WHEN

HE DID NOT DO SO AFTER THE WARNING GIVEN TO HIM ON FEBRUARY 9TH AND ON BILLINGS' FURTHER RECOMMENDATION OF MARCH 6TH HE WAS DISMISSED ON MARCH 7TH. CRAW MAINTAINED THAT THE ONLY REASON FOR DISCHARGING RUPPLE WAS HIS INABILITY TO CARRY OUT THE WORK ASSIGNED TO HIM TO THE SATISFACTION OF THE RESPONDENT.

11. A COMPLAINT IN CASES OF THIS NATURE HAS AN ONUS OF ESTABLISHING ITS ALLEGATIONS THAT THE RESPONDENT, IN DEALING WITH AN AGGRIEVED PERSON, ACTED CONTRARY TO THE LABOUR RELATIONS ACT. IN THIS REGARD THE BOARD MUST BE SATISFIED THAT THE COMPLAINANT HAS MET THE BURDEN OF PROVING BY A REASONABLE PREPONDERANCE OF EVIDENCE WHICH WHEN WEIGHED WITH THAT OPPOSED TO IT LEADS TO A CONCLUSION THAT THE GREATER PROBABILITY OF TRUTH LIES THEREIN. IN THE NATIONAL AUTOMATIC VENDING COMPANY CASE C.L.L.R. TRANSFER BINDER 1960-64 ¶16,278; C.L.S. 76,935 AT PAGE 76,937 THE BOARD STATED AS FOLLOWS:

IN WEIGHING THE EVIDENCE AS TO THESE CONFLICTING CLAIMS, THE BOARD MUST CONSIDER ALL THE CIRCUMSTANCES, INCLUDING THE CREDIBILITY OF THE WITNESSES, THE NATURE OF THE REASONS GIVEN, IF ANY, AT THE TIME FOR THE EMPLOYER'S ACTION AND THE BASIS THEREFOR, THE EMPLOYMENT HISTORY OF THE EMPLOYEE AFFECTED, THE EXISTENCE OF CONTEMPORANEOUS UNION ACTIVITY, THE PARTICIPATION BY THIS EMPLOYEE AND OTHER EMPLOYEES IN SUCH ACTIVITIES, ANY OVERT ACTS OF THE EMPLOYER WHICH MAY HAVE BEEN IN RESPONSE TO SUCH ACTIVITIES, THE TIMING AND MANNER OF THE DISCHARGE OFTEN LIE EXCLUSIVELY WITHIN THE KNOWLEDGE OR MEANS OF KNOWLEDGE OF THE EMPLOYER. NEEDLESS TO SAY, HOWEVER, THE BOARD MUST ALSO BE CIRCUMSPECT TO PREVENT AN INNOCENT EMPLOYER FROM BEING VICTIMIZED BY UNFOUNDED OR IMAGINARY CLAIMS OF DISCRIMINATION LAUNCHED MERELY BECAUSE AN EMPLOYEE'S DISCHARGE IS COINCIDENTAL WITH A UNION'S ORGANIZATIONAL CAMPAIGN. IN THIS RESPECT THERE MUST, OF COURSE, BE EVIDENCE OF A SUBSTANTIAL NATURE FROM WHICH THE BOARD CAN BE SATISFIED BY REASONABLE INFERENCES OR DIRECT EVIDENCE THAT THE EMPLOYEE HAS BEEN DISCHARGED CONTRARY TO THE ACT.

12. IN THE INSTANT CASE IN CONSIDERING THE REASONS GIVEN BY THE RESPONDENT FOR ITS ACTIONS PERTAINING TO THE AGGRIEVED PERSON THE MATTER OF CREDIBILITY OF THE WITNESSES IS OF CRITICAL IMPORTANCE. IN THIS REGARD HAVING OBSERVED THE MANNER IN WHICH THE RESPONDENT'S WITNESSES GAVE THEIR EVIDENCE ON WHICH THEY WERE VIGOROUSLY CROSS EXAMINED AND REMAINED ON THE SUBSTANTIAL ISSUES UNSHAKEN, WE HAVE NO HESITATION IN ACCEPTING THEIR TESTIMONY IN PREFERENCE TO THAT OF

THE AGGRIEVED PERSON. IT IS CLEAR FROM THE EVIDENCE OF BOTH BILLINGS AND PORTEOUS THAT THEIR DISSATISFACTION WITH RUPPLE'S WORK COMMENCED WELL BEFORE FEBRUARY 7TH AND THAT BILLINGS COMMUNICATED THEIR OPINIONS TO CRAW. THE BOARD IS NOT CALLED ON TO ADJUDICATE WHETHER THE RESPONDENT ACTED FAIRLY IN ITS ASSESSMENT OF RUPPLE'S WORK BUT MUST BE CONCERNED WHETHER RUPPLE WAS DISCRIMINATED AGAINST BY THE RESPONDENT CONTRARY TO THE ACT. THE EVIDENCE OF THE RESPONDENT ESTABLISHES THAT RUPPLE WAS GIVEN AMPLE OPPORTUNITY TO PROVE HIS CAPABILITIES TO THE EXTENT THAT CRAW OVERRULED BILLINGS' OBJECTIONS IN HIS ENDORSEMENT OF RUPPLE'S APPLICATION FOR A SOUTHAM FELLOWSHIP, ALBEIT WITH CONSIDERABLE RESERVATION, AND AGAIN ON FEBRUARY 9TH AFTER BILLINGS FIRM RECOMMENDATION THAT RUPPLE BE DISCHARGED CRAW GAVE RUPPLE 30 DAYS TO IMPROVE. THIS ACTION IS NOT CONSISTENT WITH THE ALLEGATION THAT THE RESPONDENT WANTED TO DEFEAT THE UNION'S CAMPAIGN THROUGH RUPPLE, AS HE WAS RETAINED AS AN EMPLOYEE OF THE RESPONDENT UNTIL MARCH 7TH. THE HEARING BY THE BOARD ON THE APPLICATION FOR CERTIFICATION WAS HELD ON FEBRUARY 28TH. THIS CONDUCT BY THE RESPONSIBLE OFFICERS OF THE RESPONDENT MUST THEREFORE BE GIVEN FAVOURABLE WEIGHT IN CONSIDERING THE REASON FOR RUPPLE'S DISCHARGE. WE ARE SATISFIED FROM THE EVIDENCE THAT ON FEBRUARY 9TH NEITHER BILLINGS NOR CRAW WAS AWARE OF THE ORGANIZING CAMPAIGN STARTED BY THE COMPLAINANT AND THIS WAS NOT A FACTOR IN BILLINGS' RECOMMENDATION.

13. AFTER FEBRUARY 9TH, BILLINGS REVIEWED RUPPLE'S WORK WHICH IN HIS OPINION DID NOT IMPROVE, AND HE AGAIN RECOMMENDED HIS DISMISSAL ON MARCH 6TH. CRAW THEN AGREED AND RUPPLE WAS DISCHARGED ON MARCH 7TH. ON FEBRUARY 9TH, RUPPLE ADMITTED TO CRAW THAT HE HAD BEEN CARELESS AND ON MARCH 7TH HE SAID HE WAS ONLY SURPRISED THAT HE WAS DISCHARGED AFTER AND NOT DURING HIS WORKING HOURS. OBVIOUSLY RUPPLE SUSPECTED THAT BECAUSE OF HIS ACTIVITIES ON BEHALF OF THE COMPLAINANT ON FEBRUARY 7TH AND IN THE DAYS FOLLOWING AND BECAUSE OF CRAW'S EXPRESSED HOSTILITY TO THE GUILD ON FEBRUARY 14TH, THAT THE RESPONDENT KNEW BEFORE FEBRUARY 9TH OF HIS ACTIVITIES IN THIS REGARD AND REACTED AGAINST HIM. IN OUR VIEW, THE RESPONDENT HAS ADEQUATELY ESTABLISHED THAT THIS WAS NOT ITS MOTIVE IN DEALING WITH RUPPLE IN THE MANNER THAT IT DID.

14. HAVING REGARD TO ALL THE EVIDENCE AND THE ARGUMENTS OF COUNSEL FOR THE PARTIES PRESENTED TO THE BOARD ON THIS MATTER, THE BOARD FINDS THAT THE COMPLAINANT HAS NOT MET THE ONUS ON IT, TO ESTABLISH THAT THE AGGRIEVED PERSON WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT.

15. THE APPLICATION IS ACCORDINGLY DISMISSED.

14712-68-U: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. BERTRAND AND FRERE CONSTRUCTION CO. LTD. (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS F. W. MURRAY AND O. HODGES.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, T. REES, J. PAYNE FOR THE APPLICANT, AND JOHN G. DUNLAP FOR THE RESPONDENT.

DECISION OF THE BOARD: AUGUST 6, 1968.

1. THIS IS AN APPLICATION FOR RELIEF PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT THE AGGRIEVED PERSON MARCEL SAUVE WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 48, 50(A) AND (C), AND 52 OF THE ACT AND REQUESTS THAT HE BE REINSTATED IN HIS FORMER EMPLOYMENT WITH COMPENSATION FOR TIME LOST. THE RESPONDENT DENIES THE COMPLAINT.

2. THE EVIDENCE OF THE AGGRIEVED PERSON IS THAT HE WAS HIRED BY THE RESPONDENT AS A TRUCK DRIVER ON FEBRUARY 2ND, 1968 AND HE WORKED PART TIME UNTIL ABOUT THE MIDDLE OF APRIL WHEN HE BECAME A FULL TIME EMPLOYEE. HE THEN WORKED 6 DAYS A WEEK AND UP TO A TOTAL OF 60 HOURS IN A WEEK. ON MAY 5TH HE WAS APPROACHED AT HOME BY ANOTHER EMPLOYEE OF THE RESPONDENT AND A SHOP STEWARD FROM ANOTHER FIRM WHO REQUESTED HIM TO SIGN AN APPLICATION FOR MEMBERSHIP IN THE COMPLAINANT UNION, WHICH HE DID. ON MONDAY, MAY 13TH, HE SAW THE NOTICE OF APPLICATION FOR CERTIFICATION FORM WHICH HAD BEEN POSTED IN THE RESPONDENT'S OFFICE. ABOUT 3:00 P.M. THAT DAY MR. DAOUXT, A CRANE OPERATOR, ASKED HIM TO SIGN A PETITION AGAINST THE APPLICATION AND HE CALLED HIM INTO A TRAILER BETWEEN THE GARAGE AND THE PLANT AND SHOWED HIM THE PAPER BUT SAUVE NOT SEEING ANY OTHER SIGNATURES ON IT TOLD HIM TO GET OTHERS TO SIGN IT AND THEN SEE HIM. AGAIN AT ABOUT 6:00 P.M. DAOUXT ASKED HIM TO SIGN BUT SAUVE SAID TO GET SOME ONE ELSE TO SIGN. THE NEXT MORNING DAOUXT TOLD HIM THAT IT WAS NONE OF HIS BUSINESS BUT FOR SAUVE'S OWN GOOD HE SHOULD SIGN THE PETITION. SAUVE THEN REFUSED. LATER THAT MORNING MR. PRUDHOMME, A CEMENT INSPECTOR, ASKED HIM WHAT HE THOUGHT ABOUT THE UNION AND TOLD HIM THAT IF HE SIGNED THE PETITION THE COMPANY WOULD NOT DO ANYTHING ABOUT AN ACCIDENT WHICH HE HAD HAD WITH A COMPANY TRUCK THE PREVIOUS SATURDAY BUT IF HE REFUSED TO SIGN THE PAPER THEN THE COMPANY WOULD USE THE ACCIDENT TO LET HIM GO. PRUDHOMME GAVE HIM UNTIL 2:00 P.M. TO MAKE UP HIS MIND AND INDICATED THAT IF HE DID NOT SIGN THERE WAS NOTHING HE COULD DO TO KEEP SAUVE ON THE JOB. AFTER 2:00 P.M. THAT DAY HE WAS AGAIN ASKED TO SIGN THE PETITION BY ANOTHER

EMPLOYEE BUT SEEING THAT MOST OF THE OTHER EMPLOYEES HAD SIGNED IT HE SAID THAT THEY HAD ENOUGH SIGNATURES AND THAT THEY DID NOT NEED HIS. THEN HE WAS OFFERED THE RETURN OF THE MONEY WHICH HE PAID TO THE UNION AT THE TIME OF SIGNING THE APPLICATION FOR MEMBERSHIP IF HE WOULD SIGN BUT HE REFUSED. ON WEDNESDAY, MAY 15TH HE WAS GIVEN ONE LOAD IN THE MORNING ONLY AND EVEN THOUGH OTHER TRUCKS WERE SENT OUT THROUGHOUT THE DAY HE WAS KEPT IDLE. AFTER A WHILE, HE ASKED PRUDHOMME WHAT THE TROUBLE WAS AND PRUDHOMME TOLD HIM THAT HE HAD TO LET SAUVE GO AT THE END OF THE DAY AND IF HE HAD SIGNED THE PETITION EVERYTHING WOULD HAVE BEEN ALL RIGHT. SAUVE THEREUPON LEFT THE PREMISES.

3. THE ACCIDENT REFERRED TO OCCURRED ON MAY 11TH ON A SERVICE STATION'S PARKING LOT AT A JOB SITE. WHILE MOVING HIS TRUCK FORWARD IT HIT THE END OF A BOOM ON A CRANE LOCATED BEHIND HIS VEHICLE. HE WAS THEN TOLD THAT THE DAMAGE WAS ABOUT \$75.00 TO THE TOP OF THE CAB. PRUDHOMME SAW THE ACCIDENT AND TOLD SAUVE THERE WAS NO NEED TO CALL A POLICEMAN AS IT WAS A MINOR ACCIDENT. SAUVE ASKED HIM IF HE WOULD GET A "BLAST" AND PRUDHOMME REPLIED THAT THERE WOULD NOT BE TOO MUCH SAID. THE ONLY MENTION MADE BY THE RESPONDENT FOLLOWING THE ACCIDENT WAS DURING HIS CONVERSATION WITH PRUDHOMME ON MAY 14TH. SUBSEQUENTLY A MONTH AFTER HIS DISCHARGE HE HAD A CONVERSATION WITH AN INSURANCE AGENT ABOUT IT. SAUVE WAS EARNING \$2.00 PER HOUR UP TO THE DATE OF HIS DISCHARGE. HE OBTAINED WORK AS A TRUCK DRIVER WITH ANOTHER COMPANY ON MAY 21ST AT \$2.46 PER HOUR BUT REQUESTED TO BE REINSTATED WITH THE RESPONDENT TO PROTECT HIS SENIORITY.

4. LOUIS PRUDHOMME, A CONCRETE INSPECTOR ADMITTED THAT HE WAS CONSIDERED TO BE PART OF THE MANAGEMENT OF THE RESPONDENT. HE STATED THAT AT THE TIME OF SAUVE'S ACCIDENT HE HAD NOT THOUGHT IT TO BE SERIOUS BUT BECAUSE OF A LETTER RECEIVED BY THE RESPONDENT FROM ITS INSURANCE COMPANY IN CONNECTION WITH SAUVE'S ACCIDENT HE HAD TO LET SAUVE GO. HE DENIED HAVING ANY CONVERSATION WHATSOEVER WITH SAUVE OR ANY OTHER EMPLOYEE REGARDING THE UNION OR THE PETITION. HE SAID THAT HE DID NOT ATTEMPT TO INFLUENCE SAUVE TO SIGN THE PETITION. HE SAID THAT HE ONLY HEARD OF A PETITION AFTER IT HAD BEEN SENT TO THE BOARD BY THE EMPLOYEES. HE MADE AN ACCIDENT REPORT ON THE DAY OF SAUVE'S ACCIDENT WHICH HE FORWARDED TO THE RESPONDENT'S HEAD OFFICE. HE DID NOT SEE THE LETTER FROM THE INSURANCE COMPANY BUT WAS TOLD ABOUT IT OVER THE TELEPHONE. HE COULD NOT RECALL WHETHER HE HAD TOLD SAUVE ABOUT THE INSURANCE COMPANY'S LETTER AT THE TIME HE DISCHARGED HIM. HE MAINTAINED, HOWEVER, THAT THIS WAS THE ONLY REASON THAT SAUVE WAS DISCHARGED.

5. THERE IS A DIRECT CONTRADICTION BETWEEN THE EVIDENCE OF THE AGGRIEVED PERSON AND THAT OF THE WITNESSES FOR THE RESPONDENT SAUVE REFERS TO A NUMBER OF CONVERSATIONS IN CONNECTION WITH THE SIGNING OF A PETITION, SOME WITH OTHER EMPLOYEES OF THE RESPONDENT AND ALSO WITH PRUDHOMME. THE RESULT OF WHICH ACCORDING TO SAUVE, WAS EITHER TO SIGN THE PETITION OR BE FIRED. PRUDHOMME

CATEGORICALLY DENIES THIS AND STATES THAT THE ONLY REASON THAT THE RESPONDENT DISCHARGED SAUVE WAS BECAUSE OF THE INSURANCE COMPANY'S LETTER RECEIVED BY THE RESPONDENT AFTER HIS ACCIDENT. THERE WAS NO EVIDENCE AS TO THE EXACT POSITION OF THE INSURANCE COMPANY OR WHEN THE LETTER WAS RECEIVED BY THE COMPANY. PRUDHOMME COULD NOT RECALL WHETHER HE HAD MENTIONED THE COMMUNICATION FROM THE INSURANCE COMPANY TO SAUVE AT THE TIME HE WAS DISCHARGED AND IF THE RECEIPT OF THIS CORRESPONDENCE BY THE RESPONDENT WAS THE SOLE REASON FOR THE RESPONDENT'S ACTION, SURELY THIS WOULD HAVE BEEN EXPLAINED TO SAUVE AT THAT TIME. THIS IS PARTICULARLY SIGNIFICANT WHEN IT WAS ADMITTED THAT PRUDHOMME AND SAUVE WERE FRIENDS AND HAD PREVIOUSLY WORKED TOGETHER ON OTHER PROJECTS FOR OTHER COMPANIES AND IT WAS BECAUSE OF THIS RELATIONSHIP THAT PRUDHOMME HIRED SAUVE. THESE FACTORS DO NOT LEND CREDENCE TO THE CONTENTION OF THE RESPONDENT. IN OUR OPINION, WHATEVER THE CONTENTS OF THE LETTER OF THE RESPONDENT'S INSURANCE COMPANY REGARDING SAUVE, IT WAS AT BEST A CONVENIENT EXCUSE FOR THE RESPONDENT'S ACTIONS AND DID NOT CONSTITUTE THE RESPONDENT'S MOTIVATION IN DISCHARGING SAUVE. IT IS QUITE APPARENT ON THE EVIDENCE OF THE AGGRIEVED PERSON, WHICH WE ACCEPT IN PREFERENCE TO THAT OF PRUDHOMME, THAT THE RESPONDENT WAS AWARE OF HIS MEMBERSHIP IN AND SUPPORT FOR THE COMPLAINANT UNION AND IMPROPERLY ATTEMPTED TO INFLUENCE HIM TO REVOKE HIS SUPPORT FOR THE COMPLAINANT. AFTER REFUSING TO DO SO, HE WAS DISCHARGED.

6. HAVING REGARD TO ALL OF THE EVIDENCE BEFORE US WE FIND THAT THE COMPLAINANT HAS ESTABLISHED ON THE BALANCE OF PROBABILITIES THAT THE AGGRIEVED PERSON WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT.

7. THE BOARD THEREFORE DETERMINES THAT THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY MARCEL SAUVE TO THE SAME OR LIKE EMPLOYMENT WITH THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD AND RECEIVED PRIOR AND UP TO MAY 15TH, 1968. HAVING REGARD TO THE EVIDENCE WITH RESPECT TO THE AGGRIEVED PERSON'S LOSS OF EARNINGS THE BOARD FURTHER DETERMINES THAT THE RESPONDENT PAY TO MARCEL SAUVE THE SUM OF \$60.00 FORTHWITH AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BETWEEN THE DATE OF HIS DISCHARGE AND THE DATE OF THE HEARING IN THIS MATTER.

8. THE BOARD DIRECTS THAT THE PARTIES MEET WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS EARNINGS OR OTHER BENEFITS, IF ANY, NOW SUSTAINED OR WHICH HEREFTER MAY BE SUSTAINED BY MARCEL SAUVE, BETWEEN JULY 26TH, 1968 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT WHICH SHALL BE PAID TO HIM. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT ABOVE REFERRED TO WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, AT THE REQUEST OF EITHER PARTY, THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO ANY ADDITIONAL AMOUNT TO BE PAID TO MARCEL SAUVE WHICH WILL THEREAFTER BE DETERMINED BY THE BOARD.

14741-68-U: WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCAL 145 (COMPLAINANT) V. GAMBIN BROTHERS LIMITED, EASTERN CONSTRUCTION COMPANY LIMITED, UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS' OF AMERICA, LOCAL 18 AND CHARLES GUAGLIANO (RESPONDENTS).

- AND -

14742-68-U: WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION, LOCALS 97 AND 145 (COMPLAINANTS) V. GAMBIN BROTHERS LIMITED, EASTERN CONSTRUCTION COMPANY LIMITED, UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS' OF AMERICA, LOCAL 18 AND CHARLES GUAGLIANO (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, J. B. WATERMAN AND K. WELLER FOR THE COMPLAINANTS; J. P. SANDERSON, A. J. CLARK, P.J.V. STEVENS, G. BUTTLE, A. POLIMAC AND J. SIMANDL FOR GAMBIN BROTHERS LIMITED AND EASTERN CONSTRUCTION COMPANY LIMITED; S. SIMPSON AND C. GUAGLIANO FOR UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 AND CHARLES GUAGLIANO.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: AUGUST 14, 1968.

1. THE ABOVE COMPLAINTS OF THE COMPLAINANTS MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT ARE HEREBY CONSOLIDATED.
2. THE COMPLAINANTS COMPLAIN THAT THE AGGRIEVED PERSONS HAVE BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTION 37, 50(A) AND 52 OF THE LABOUR RELATIONS ACT. MORE PARTICULARLY, THE COMPLAINANTS ALLEGE THAT ON OR ABOUT MAY 30TH, 1968, BRUNO GAMBIN, GORDON BUTTLE AND RAY BURSEY, RESPECTIVELY, PRESIDENT, SHOP FOREMAN AND LATHERS FOREMAN OF THE RESPONDENT GAMBIN BROTHERS LIMITED, REFUSED TO EMPLOY OR TO CONTINUE TO EMPLOY THE AGGRIEVED PERSONS THOMAS KING, ANTHONY OSECHUK, RAOUL BABIN AND MURRAY CARTER TO INSTALL METAL FURRING AND METAL STUDS TO RECEIVE DRYWALL FOR WALLS AND CEILINGS ON THE GAMBIN BROTHERS LIMITED JOB AT THE BURLINGTON MALL PROJECT, GUELPH LINE, BURLINGTON, BECAUSE THEY WERE MEMBERS OF THE COMPLAINANT TRADE UNIONS AND IN CONTRAVENTION OF A COLLECTIVE AGREEMENT CURRENTLY IN FORCE AND BINDING UPON THE COMPLAINANTS AND GAMBIN BROTHERS LIMITED, WHEREIN THE LATTER IS REQUIRED TO EMPLOY MEMBERS OF THE COMPLAINANTS TO PERFORM THE SAID WORK. THE COMPLAINANTS ALSO ALLEGE THAT ON OR ABOUT JUNE 3RD, 1968, RAY BURSEY REFUSED TO HIRE THE AGGRIEVED PERSONS STANLEY SIMMONS AND THOMAS TUCK TO DO THE ABOVE DESCRIBED WORK IN CONTRAVENTION OF THE SAID COLLECTIVE AGREEMENT. THE COMPLAINANTS FURTHER ALLEGE THAT GAMBIN BROTHERS LIMITED, BY REFUSING TO EMPLOY OR TO CONTINUE TO EMPLOY THE AGGRIEVED PERSONS, DISCRIMINATED AGAINST THEM AS TO THEIR OPPORTUNITY FOR EMPLOYMENT BY REASON OF THEIR BEING MEMBERS OF THE COMPLAINANTS AND NOT MEMBERS OF THE RESPONDENT UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS' OF AMERICA, LOCAL 18. THE COMPLAINANTS CLAIM THAT THE ABOVE OFFENCES

COMMITTED BY GAMBIN BROTHERS LIMITED WERE UNLAWFULLY PROCURED BY THE CONDUCT AND ACTIVITIES OF THE RESPONDENTS EASTERN CONSTRUCTION COMPANY LIMITED, THE UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS' OF AMERICA, LOCAL 18 AND CHARLES GUAGLIANO.

3. IN SUPPORT OF THEIR COMPLAINTS, THE COMPLAINANTS ALLEGED THE FOLLOWING FACTS. ON THE MORNING OF MONDAY, MAY 13TH, 1968, ON THE PROJECT REFERRED TO IN PARAGRAPH 2, THE RESPONDENT CHARLES GUAGLIANO, AN OFFICER OF THE RESPONDENT UNION, THREATENED BRUNO GAMBIN THAT HE, GUAGLIANO, WOULD CAUSE ALL MEMBERS OF THE RESPONDENT UNION EMPLOYED ON THE PROJECT TO CEASE WORK AND WITHDRAW THEREFROM IF THE WORK IN QUESTION WAS PERFORMED BY MEMBERS OF THE COMPLAINANT UNIONS. ON WEDNESDAY, MAY 15TH, 1968, THE SAID WORK WAS ASSIGNED BY RAY BURSEY TO CERTAIN MEMBERS OF THE COMPLAINANTS WHO WERE THEN IN THE EMPLOY OF THE RESPONDENT GAMBIN BROTHERS LIMITED ON THE SAID PROJECT. ON THURSDAY, MAY 23RD, 1968, ROBERT FRANK, A BUSINESS AGENT OF THE COMPLAINANTS, WAS INFORMED BY GORDON BUTTLE THAT THE WORK IN QUESTION WOULD NO LONGER BE PERFORMED BY MEMBERS OF THE COMPLAINANTS. AT SOME TIME SUBSEQUENT TO THE ASSIGNMENT OF THE SAID WORK TO THE MEMBERS OF THE COMPLAINANTS AND ON OR BEFORE MAY 23RD, 1968, THE RESPONDENT GUAGLIANO THREATENED JAMES SIMANDL AND AL POLIMAC, RESPECTIVELY, CONTRACT MANAGER AND PROJECT SUPERINTENDENT OF THE RESPONDENT EASTERN CONSTRUCTION COMPANY LIMITED OR ONE OF THEM OR OTHER OFFICIALS OF THE SAID RESPONDENT, THAT UNLESS THE WORK IN QUESTION WAS ASSIGNED TO MEMBERS OF THE RESPONDENT UNION, ALL MEMBERS OF THE RESPONDENT UNION EMPLOYED BY EASTERN CONSTRUCTION COMPANY LIMITED ON THE PROJECT WOULD CEASE WORK AND WITHDRAW THEREFROM. ON MONDAY, MAY 27TH, 1968 AT THE SAID PROJECT A STEWARD OF THE RESPONDENT UNION EMPLOYED BY THE RESPONDENT EASTERN THREATENED THE SAID RAY BURSEY THAT IF MEMBERS OF THE COMPLAINANT COMMENCED THE WORK IN QUESTION, THE MEMBERS OF THE RESPONDENT UNION WOULD WALK OFF THE PROJECT. ON MONDAY, MAY 27TH, 1968 POLIMAC AND SIMANDL THREATENED FRANK, KENNETH WELLER (AN OFFICIAL OF LOCAL 97 OF THE WOOD, WIRE & METAL LATHERS' INTERNATIONAL UNION WHO WAS ATTENDING ON BEHALF OF THE COMPLAINANT), BRUNO GAMBIN, GORDON BUTTLE AND THE RESPONDENT GAMBIN THAT IF THE LATTER ASSIGNED THE WORK IN QUESTION TO MEMBERS OF THE COMPLAINANT THEY WOULD CANCEL THE CONTRACT WITH GAMBIN INSOFAR AS IT RELATED TO THE WORK IN QUESTION OR CHANGE THE SPECIFICATIONS SO AS TO ELIMINATE THIS WORK. ON THURSDAY, MAY 30TH, 1968 AS A RESULT OF THE CONDUCT OF THE RESPONDENT UNION AND THE RESPONDENTS EASTERN AND GUAGLIANO AS AFORESAID, AT APPROXIMATELY 12:00 O'CLOCK NOON MEMBERS OF THE RESPONDENT UNION COMMENCED EMPLOYMENT FOR THE RESPONDENT GAMBIN PERFORMING THE SAID WORK. ON MONDAY, JUNE 3RD, 1968 THE AGGRIEVED PERSONS ATTENDED AT THE SAID PROJECT AND REQUESTED THAT THE RESPONDENT GAMBIN HIRE THEM TO PERFORM THE WORK IN QUESTION PURSUANT TO THE AFORE-MENTIONED COLLECTIVE AGREEMENT. THEY WERE ADVISED BY BURSEY THAT THE RESPONDENT GAMBIN COULD NO LONGER EMPLOY MEMBERS OF THE COMPLAINANT TO DO THIS WORK. IN ADDITION, BURSEY ADVISED THAT HE COULD NOT EVEN DO THE SAID WORK HIMSELF AS HE WAS A MEMBER

OF THE COMPLAINANT. AT THE TIME THE AGGRIEVED PERSONS ATTENDED AT THE PROJECT ON MONDAY, JUNE 3RD, 1968 THEY OBSERVED THE WORK IN QUESTION BEING PERFORMED BY MEMBERS OF THE RESPONDENT UNION.

4. THE REMEDIES WHICH THE COMPLAINANTS ARE REQUESTING OF THE BOARD ARE AS FOLLOWS:

- (1) THE RESPONDENT GAMBIN BROTHERS LIMITED BE REQUIRED TO EMPLOY THE AGGRIEVED PERSONS AT THE BURLINGTON MALL PROJECT AT BURLINGTON TO INSTALL METAL FURRING AND METAL STUDS TO RECEIVE DRYWALL ON ALL CEILINGS, SUSPENDED ACOUSTICAL CEILING SYSTEMS AND WALLS.
- (2) THE RESPONDENT GAMBIN BROTHERS LIMITED BE DIRECTED TO REFRAIN FROM REFUSING TO EMPLOY OR TO CONTINUE TO EMPLOY AND FROM DISCRIMINATING AGAINST THE AGGRIEVED PERSONS BECAUSE THEY ARE MEMBERS OF THE COMPLAINANT UNIONS.
- (3) THE RESPONDENTS EASTERN CONSTRUCTION COMPANY LIMITED, CHARLES GUAGLIANO AND THE UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS' OF AMERICA, LOCAL 18, BE DIRECTED TO REFRAIN FROM THE FOLLOWING:
 - (I) ALL ACTS OR CONDUCT TENDING TO CAUSE THE RESPONDENT GAMBIN BROTHERS LIMITED TO COMMIT THE OFFENCES ALLEGED BY THE COMPLAINANTS.
 - (II) INTERFERING WITH THE COLLECTIVE AGREEMENT OR COLLECTIVE BARGAINING RELATIONSHIP BETWEEN GAMBIN BROTHERS LIMITED AND THE INTERPROVINCIAL COUNCIL OF LATHERS OF WHICH COUNCIL THE COMPLAINANTS ARE MEMBERS.
 - (III) ENGAGING IN CONDUCT SEPARATELY OR IN CONCERT WITH EACH OTHER RESULTING IN DISCRIMINATION AGAINST THE AGGRIEVED PERSONS AS TO THEIR EMPLOYMENT OR THEIR OPPORTUNITY FOR EMPLOYMENT BECAUSE THEY ARE MEMBERS OF THE COMPLAINANTS.
- (4) THE AGGRIEVED PERSONS BE COMPENSATED BY THE RESPONDENTS FOR ANY LOSS OF EARNINGS AND EMPLOYEE BENEFITS FROM JUNE 3RD, 1968 TO THE DATE OF EMPLOYMENT.
- (5) SUCH FURTHER AND OTHER RELIEF AS THE BOARD DEEMS JUST.

5. AT THE OUTSET OF THE HEARING, COUNSEL FOR THE COMPLAINANTS CHALLENGED THE PROPRIETY OF BOARD MEMBER EDMUND BOYER SITTING ON THE DIVISION OF THE BOARD ASSIGNED TO ENTERTAIN AND MAKE A DETERMINATION ON THE COMPLAINTS. THE BASIS OF COUNSEL'S CHALLENGE WAS THAT AT ONE TIME BOARD MEMBER BOYER HAD BEEN AN OFFICER AND ACTIVE IN THE AFFAIRS OF THE UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS' OF AMERICA. WHILE CONCEDING THAT BOARD MEMBER BOYER HAD NOT BEEN ACTIVE IN THE

AFFAIRS OF THE RESPONDENT UNION FOR A PERIOD OF A NUMBER OF YEARS, COUNSEL SUBMITTED THAT THE WORK ASSIGNMENT DISPUTE BETWEEN THE LATHERS' AND CARPENTERS' UNIONS WHICH IS INVOLVED IN THE COMPLAINTS HAD EXTENDED BACK MANY YEARS TO A TIME WHEN BOARD MEMBER BOYER HAD BEEN CLOSELY ASSOCIATED WITH THE RESPONDENT UNION.

6. ALTHOUGH BOARD MEMBER BOYER IS A MEMBER OF LOCAL 1940 OF THE UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS' OF AMERICA, HE HAS BEEN EXCUSED FROM ATTENDANCE AT MEETINGS OF LOCAL 1940, DOES NOT PARTICIPATE IN ANY OF ITS ACTIVITIES AND DOES NOT PAY ANY ASSESSMENTS, AS DISTINCT FROM DUES, TO THE LOCAL. MOREOVER, ON ASSUMING HIS DUTIES AS A MEMBER OF THE BOARD, MR. BOYER SWORE AN OATH THAT HE WOULD FAITHFULLY, TRULY AND IMPARTIALLY TO THE BEST OF HIS JUDGMENT, SKILL AND ABILITY, EXECUTE AND PERFORM THE OFFICE OF A BOARD MEMBER. MR. BOYER EXPRESSED HIS CONFIDENCE THAT HE COULD DISCHARGE HIS OBLIGATIONS WITH RESPECT TO THE INSTANT COMPLAINTS IN ACCORDANCE WITH HIS OATH OF OFFICE. BOARD MEMBER BOYER ACCORDINGLY DID NOT DEEM IT NECESSARY TO DISQUALIFY HIMSELF FROM THE DIVISION OF THE BOARD ASSIGNED TO HEAR THE INSTANT COMPLAINTS. THE PARTIES AT THE INITIAL HEARING IN THESE MATTERS WERE SO ADVISED OF THE POSITION OF BOARD MEMBER BOYER BY THE CHAIRMAN OF THE DIVISION OF THE BOARD ASSIGNED TO THE CASES.

7. COUNSEL FOR THE RESPONDENT COMPANIES AND COUNSEL FOR THE RESPONDENT UNION AND CHARLES GUAGLIANO DENIED THE ALLEGATIONS OF THE COMPLAINANTS AND PUT THEM TO THE STRICT PROOF THEREOF. ASSUMING FOR PURPOSES OF ARGUMENT ONLY, HOWEVER, THAT THE ALLEGATIONS OF THE COMPLAINANTS, IN FACT, CAN BE SUBSTANTIATED, BOTH COUNSEL SUBMIT THAT THE BOARD OUGHT NOT TO ENTERTAIN THE COMPLAINTS HAVING REGARD TO THE FACT THAT THEY WERE MADE UNDER SECTION 65 OF THE ACT. COUNSEL ARGUED THAT OTHER AND MORE APPROPRIATE PROCEDURES ARE AVAILABLE TO THE COMPLAINANTS AND THAT THE BOARD SHOULD REQUIRE THE COMPLAINANTS TO SEEK THE REMEDIES WHICH THEY ARE REQUESTING IN THE INSTANT COMPLAINTS BY OTHER MEANS. MORE PARTICULARLY, COUNSEL ASSERTED THAT THE REMEDIES WHICH THE COMPLAINANTS ARE SEEKING WITH RESPECT TO THE NAMED AGGRIEVED PERSONS ARE AVAILABLE THROUGH THE GRIEVANCE AND ARBITRATION PROCEDURES ESTABLISHED IN THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE COMPLAINANTS AND GAMBIN BROTHERS LIMITED. IN THE CASE OF THE NAMED RESPONDENTS COUNSEL ARGUED THAT THE REMEDIES WHICH THE COMPLAINANTS ARE SEEKING AGAINST THEM ARE AVAILABLE BY WAY OF A COMPLAINT MADE UNDER SECTION 66 OF THE ACT. COUNSEL SUBMITS THAT, IN ESSENCE, THE SUBSTANCE OF THE INSTANT COMPLAINTS IS A WORK ASSIGNMENT DISPUTE AND THAT SECTION 66 IS SPECIFICALLY DESIGNED TO DEAL WITH SUCH DISPUTES. COUNSEL MADE IT CLEAR THAT WHILE COUNSEL FOR THE COMPLAINANTS MAY CLAIM THAT THE MERITS OF THE WORK ASSIGNMENT DISPUTE BETWEEN THE LATHERS' AND CARPENTERS' UNIONS ARE NOT IN ISSUE AND HE DOES NOT PROPOSE TO LEAD EVIDENCE RELATING TO THE MERITS OF THAT DISPUTE, THE MERITS OF THE WORK ASSIGNMENT DISPUTE FORM AN INTEGRAL PART OF THE RESPONDENTS' DEFENCE TO THE ALLEGATIONS MADE AGAINST THEM BY THE COMPLAINANTS. COUNSEL SERVED NOTICE THAT IF THE BOARD PROCEEDED TO HEAR THE INSTANT COMPLAINTS THEY INTEND TO LEAD EVIDENCE RELATING TO THE MERITS OF THE WORK ASSIGNMENT DISPUTE AND

THAT THE BOARD WOULD BE CALLED UPON TO ADJUDICATE ON THE DISPUTE IN ORDER TO DETERMINE WHETHER THE COMPLAINANTS WERE ENTITLED TO THE RELIEF WHICH THEY ARE SEEKING. FOR THAT REASON, COUNSEL ARGUED THAT THE COMPLAINTS SHOULD HAVE BEEN MADE UNDER SECTION 66 RATHER THAN SECTION 65 OF THE ACT. ACCORDING TO COUNSEL, HAD THE COMPLAINTS BEEN MADE UNDER SECTION 66 THE BOARD WOULD THEN BE IN A POSITION TO MAKE A DIRECTION CONCERNING THE WORK ASSIGNMENT IN DISPUTE AND IF THE BOARD FOUND THAT THE COMPLAINANTS WERE SO ENTITLED, IT COULD, UNDER SUBSECTION (3) OF SECTION 66, GRANT THE RELIEF WHICH THE COMPLAINANTS ARE SEEKING AGAINST THE RESPONDENTS. COUNSEL, CITING A NUMBER OF DECISIONS, STRESSED THAT IT HAS BEEN A LONG STANDING POLICY OF THE BOARD NOT TO PERMIT THE PROVISIONS OF SECTION 65 TO BE UTILIZED, EXCEPT IN SPECIAL CIRCUMSTANCES, WHEN OTHER PROCEDURES ARE AVAILABLE BY WHICH THE PARTY MAKING THE COMPLAINT HAS AN OPPORTUNITY TO SECURE THE SAME RELIEF. COUNSEL SUBMITS THAT THERE ARE NO SPECIAL CIRCUMSTANCES IN THE INSTANT COMPLAINTS WHICH SHOULD CAUSE THE BOARD TO DEPART FROM ITS ESTABLISHED POLICY.

8. COUNSEL FOR THE COMPLAINANTS SUBMITS THAT SHOULD THE COMPLAINANTS PROCEED BY WAY OF THE GRIEVANCE AND ARBITRATION PROCEDURES UNDER THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANTS AND GAMBIN BROTHERS LIMITED, AT BEST, THE COMPLAINANTS COULD ONLY SECURE THE EMPLOYMENT OR RE-EMPLOYMENT OF THE AGGRIEVED PERSONS ON THE WORK IN QUESTION. THE COMPLAINANTS, HOWEVER, COULD NOT THROUGH THIS PROCEDURE SECURE THE RELIEF THEY ARE SEEKING AGAINST THE NAMED RESPONDENTS. COUNSEL REJECTS THE ARGUMENT THAT THE COMPLAINANTS SHOULD HAVE FILED THE INSTANT COMPLAINTS UNDER SECTION 66 OF THE ACT ON THE GROUNDS THAT THE COMPLAINANTS HAVE NOT PLACED THE MERITS OF THE WORK ASSIGNMENT DISPUTE BETWEEN THE LATHERS' AND CARPENTERS' UNIONS IN ISSUE. COUNSEL STATED THAT HE DID NOT INTEND TO LEAD EVIDENCE ON THAT ISSUE. COUNSEL ARGUES THAT BY MAKING THEIR COMPLAINTS PURSUANT TO SECTION 65, THE BOARD IS IN A POSITION UNDER SUBSECTION (4) OF THAT SECTION TO GRANT THE REMEDIES AND RELIEF SOUGHT WITH RESPECT TO BOTH THE AGGRIEVED PERSONS AND THE NAMED RESPONDENTS. COUNSEL SUBMITS THAT THE BOARD HAS ONLY DECLINED TO ENTERTAIN COMPLAINTS MADE UNDER SECTION 65 WHERE A PROCEDURE WAS AVAILABLE OUTSIDE THE SCOPE OF THE BOARD. WHERE, HOWEVER, ALTERNATIVE PROCEDURES ARE AVAILABLE UNDER THE ACT, COUNSEL ARGUES THAT IT SHOULD BE LEFT TO THE OPTION OF THE PARTY SEEKING RELIEF TO DECIDE BY WHICH METHOD IT WILL PROCEED. IN THE INSTANT CASES, THE COMPLAINANTS ELECTED TO FILE THEIR COMPLAINTS UNDER SECTION 65. SINCE THE BOARD HAS THE AUTHORITY UNDER THAT SECTION TO GRANT ALL THE RELIEF WHICH THE COMPLAINANTS ARE SEEKING, COUNSEL SUBMITS THAT THE BOARD SHOULD ENTERTAIN THE COMPLAINTS.

9. LET US FIRST CONSIDER THE POSITION OF THE COMPLAINANTS RELATING TO THE NAMED AGGRIEVED PERSONS. IN THE WALLACE BARNES COMPANY LIMITED CASE, 61 C.L.L.C. 928, THE BOARD, AFTER NOTING THE ROLE OF A TRADE UNION AS COLLECTIVE BARGAINING AGENT FOR THE EMPLOYEES FOR THE PURPOSE OF NEGOTIATING A COLLECTIVE AGREEMENT, WENT ON TO SAY:

THE TRADE UNION IS ALSO THEIR BARGAINING AGENT WITH RESPECT TO THE ADMINISTRATION OF THE COLLECTIVE AGREEMENT AND WHEN DISPUTES ARISE INVOLVING THE INTERPRETATION OR ALLEGED VIOLATION OF THE AGREEMENT, THESE ARE MATTERS FOR THE PARTIES TO THAT AGREEMENT, THAT IS, THE TRADE UNION AND THE EMPLOYER.

IN THE NATIONAL SHOWCASE Co. LTD. CASE, 61 C.L.L.C. 901, A COMPLAINT WHICH WAS MADE UNDER SECTION 57 (NOW SECTION 65) OF THE ACT, MIGHT PROPERLY HAVE BEEN THE SUBJECT OF A GRIEVANCE PURSUANT TO THE PROVISIONS OF A COLLECTIVE AGREEMENT BETWEEN THE PARTIES. THE BOARD THERE STATED:

IT SEEMS TO US, THEREFORE, IN DETERMINING WHETHER WE SHOULD EXERCISE OUR DISCRETION UNDER SECTION 57, SUBSECTION 4, IT IS PROPER TO TAKE INTO ACCOUNT THE FACT THAT AN ALTERNATE REMEDY EXISTS. IN ADDITION, WHEN THIS REMEDY IS ONE WHICH THE PARTIES THEMSELVES HAVE AGREED TO AND, FURTHER, INVOLVES A PROCEDURE UNDER WHICH THE PARTIES AGREE TO ATTEMPT TO SETTLE THE DISPUTE THEMSELVES BEFORE BRINGING IN AN OUTSIDER, THAT IS, AN ARBITRATOR, WE HAVE NO HESITATION IN SAYING THAT WE OUGHT NOT TO PROCEED FURTHER UNDER SECTION 57, SUBSECTION 4.

WHILE IN THE SPECIAL CIRCUMSTANCES OF A PARTICULAR CASE WE MIGHT WELL BE PERSUADED TO TAKE THE CONTRARY VIEW, IN ALL THE CIRCUMSTANCES OF THIS CASE WE CAN FIND NO REASON TO DEPART FROM THE GENERAL PRINCIPLE ENUNCIATED ABOVE.

IN SUBSEQUENT COMPLAINTS MADE UNDER SECTION 65 WHERE THE EXERCISE OF THE BOARD'S DISCRETION WAS RAISED AS AN ISSUE, THE BOARD HAS FOLLOWED THE PRINCIPLES SET OUT IN THE ABOVE QUOTED CASES. IN EACH OF THE LATER CASES WHICH ARE CITED THE BOARD HAS HAD TO CONSIDER WHETHER THERE WERE SPECIAL CIRCUMSTANCES WARRANTING THE BOARD DEPARTING FROM ITS GENERAL POLICY (SEE NATIONAL SEA PRODUCTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1961, P. 62; HEIST INDUSTRIAL SERVICES CASE, 63 C.L.L.C. 1123; PITT STREET HOTEL LTD. CASE, 63 C.L.L.C. 1149; THE PLUMBERS ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 513; SCARBORO BOARD OF EDUCATION CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, P. 822; GENERAL BAKERIES LIMITED CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1967, P. 823; HARDING BRANTFORD LIMITED CASE, O.L.R.B. MONTHLY REPORT, MAY 1967, P. 192; CANADIAN BECHTEL LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1967, P. 292; COLLINGWOOD SHIPYARDS, DIVISION OF CANADIAN SHIPBUILDING & ENGINEERING LIMITED CASE, O.L.R.B. MONTHLY REPORT, JULY 1967, P. 376).

10. WHILE NO COLLECTIVE AGREEMENT WAS FILED WITH THE BOARD IT IS AN ADMITTED FACT THAT GAMBIN BROTHERS LIMITED IS A PARTY TO A CURRENT COLLECTIVE AGREEMENT WITH THE INTERPROVINCIAL COUNCIL OF LATHERS AND THAT THE COMPLAINANTS ARE BOUND BY THAT AGREEMENT BY VIRTUE OF THEIR MEMBERSHIP IN THE COUNCIL. THE POLICY OF THE BOARD AS SET OUT IN THE WALLACE BARNES COMPANY LIMITED CASE AND THE NATIONAL SHOWCASE Co. LTD. CASE IS NOT TO ENTERTAIN COMPLAINTS MADE UNDER SECTION 65 WHEN AN ALTERNATIVE REMEDY IS AVAILABLE, EXCEPT IN SPECIAL CIRCUMSTANCES. BASED ON THE SUBSEQUENT CITED CASES, WE SEE NO SPECIAL CIRCUMSTANCES WHICH WOULD CAUSE THE BOARD TO DEPART FROM ITS ESTABLISHED POLICY. ACCORDINGLY, THE BOARD IS NOT PREPARED TO ENTERTAIN THE INSTANT COMPLAINTS AS THEY PERTAIN TO GAMBIN BROTHERS LIMITED, AS THE REMEDIES WHICH THE COMPLAINANTS ARE SEEKING AGAINST THAT RESPONDENT ALL RELATE TO THE AGGRIEVED PERSONS AND ARE AVAILABLE TO THE COMPLAINANTS THROUGH THE GRIEVANCE AND ARBITRATION PROCEDURES OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE PARTIES.

11. LET US NOW CONSIDER THE POSITION OF THE COMPLAINANTS WITH REGARD TO THE LATTER THREE NAMED RESPONDENTS, EASTERN CONSTRUCTION COMPANY LIMITED, LOCAL 18 OF THE UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS' OF AMERICA AND CHARLES GUAGLIANO. SECTION 65 PROVIDES THAT IF THE BOARD IS SATISFIED THAT A PERSON OR PERSONS HAVE BEEN REFUSED EMPLOYMENT, DISCHARGED, DISCRIMINATED AGAINST, THREATENED, COERCED, INTIMIDATED OR OTHERWISE DEALT WITH CONTRARY TO THE ACT AS TO HIS OR THEIR EMPLOYMENT OR CONDITIONS OF EMPLOYMENT BY ANY EMPLOYER OR OTHER PERSON OR A TRADE UNION, IT SHALL DETERMINE WHAT, IF ANYTHING, THE EMPLOYER OR OTHER PERSON OR TRADE UNION SHALL DO OR REFRAIN FROM DOING WITH RESPECT THERETO. IN OTHER WORDS, SECTION 65 IS DESIGNED TO PROVIDE REMEDIES TO AGGRIEVED PERSONS AS TO THEIR EMPLOYMENT, OPPORTUNITY FOR EMPLOYMENT OR CONDITIONS OF EMPLOYMENT. WE HAVE ALREADY FOUND THAT THE AGGRIEVED PERSONS NAMED IN THE INSTANT COMPLAINTS HAVE THEIR REMEDY BY WAY OF GRIEVANCE AND ARBITRATION PROCEDURES. THE COMPLAINANTS ALLEGE THAT THE ABOVE THREE RESPONDENTS ACTED IN SUCH A WAY AS TO INDUCE GAMBIN BROTHERS LIMITED TO BREACH ITS COLLECTIVE AGREEMENT WITH THE COMPLAINANTS AND ARE REQUESTING THE BOARD TO ISSUE ORDERS REQUIRING THEM TO CEASE AND DESIST FROM SUCH CONDUCT. THE RELIEF SOUGHT DOES NOT RELATE TO THE AGGRIEVED PERSONS RATHER THE RELIEF SOUGHT RELATES TO THE CONDUCT OF THE THREE RESPONDENTS VIS A VIS GAMBIN BROTHERS LIMITED. THE LANGUAGE OF SUBSECTION (4) OF SECTION 65, HOWEVER, NEITHER CONTEMPLATES NOR IS BROAD ENOUGH TO ENCOMPASS THE TYPE OF DETERMINATIONS THAT THE COMPLAINANTS ARE SEEKING FROM THE BOARD. IF SECTION 65 WAS INTENDED TO PERMIT THE BOARD TO GRANT A REMEDY AGAINST PERSONS FOR INDUCING THE BREACH OF A COLLECTIVE AGREEMENT, SUBSECTION (4) WOULD HAVE TO CONTAIN SUCH AN EXPRESS PROVISION. IN THE ABSENCE OF SUCH A PROVISION, SECTION 65 IS NOT AVAILABLE TO THE COMPLAINANTS FOR THE REMEDIES THEY ARE ASKING WITH RESPECT TO THE LATTER THREE RESPONDENTS.

12. IT SHOULD BE POINTED OUT ALSO THAT SECTION 65 OF THE ACT IS A PROCEDURAL SECTION. BEFORE RELIEF CAN BE GRANTED UNDER SUBSECTION (4), THE BOARD MUST BE SATISFIED THAT THE EMPLOYER OR OTHER PERSON OR A TRADE UNION AGAINST WHOM THE COMPLAINANT IS SEEKING RELIEF HAVE VIOLATED SOME PROVISION OR PROVISIONS OF THE LABOUR RELATIONS ACT. THE COMPLAINANTS IN THE INSTANT COMPLAINTS ALLEGE VIOLATIONS OF SECTION 37, 50(A) AND 52 OF THE ACT. SECTION 37 PROVIDES THAT A COLLECTIVE AGREEMENT IS BINDING UPON THE EMPLOYER, THE TRADE UNION AND THE EMPLOYEES COVERED BY THE AGREEMENT. IT FOLLOWS THAT ONLY THE FOREMENTIONED CAN ACT IN BREACH OF A COLLECTIVE AGREEMENT AND THEREFORE FAIL TO COMPLY WITH THE SECTION. SECTION 50 PROHIBITS CERTAIN CONDUCT BY EMPLOYERS RELATING TO EMPLOYEES' RIGHTS. ONLY AN EMPLOYER OR A PERSON ACTING ON BEHALF OF THE EMPLOYER, HOWEVER, CAN BE GUILTY OF VIOLATING THAT SECTION. NONE OF THE LATTER THREE RESPONDENTS CAN BE CATEGORIZED AS AGENTS OF GAMBIN BROTHERS LIMITED IN THE INSTANT COMPLAINTS. SECTION 52 PROHIBITS INTIMIDATION AND COERCION TO COMPEL A PERSON TO BECOME OR REFRAIN FROM BECOMING OR CONTINUING TO BE OR CEASE TO BE A MEMBER OF A TRADE UNION. IT WOULD NOT BE REALISTIC TO SUGGEST THAT ANY OF THE LATTER THREE RESPONDENTS ARE TRYING TO COMPEL EMPLOYEES OF GAMBIN BROTHERS LIMITED WHO ARE MEMBERS OF THE COMPLAINANT UNIONS TO CEASE TO BE MEMBERS OF THOSE UNIONS OR TO COMPEL THEM TO BECOME MEMBERS OF THE RESPONDENT UNION. IN SHORT, WITH RESPECT TO THE LATTER THREE RESPONDENTS THERE IS NO PRIMA FACIE CASE TO SUPPORT THE COMPLAINANTS' ALLEGATIONS THAT THERE HAS BEEN A VIOLATION OF THE ABOVE CITED SECTIONS OF THE ACT. ACCORDINGLY, ON THIS BASIS AS WELL, THE BOARD DOES NOT HAVE THE JURISDICTION UNDER SECTION 65 TO ISSUE THE ORDERS AFFECTING THE RESPONDENTS EASTERN CONSTRUCTION COMPANY LIMITED, LOCAL 18 OF THE UNITED BROTHERHOOD OF CARPENTERS' AND JOINERS' OF AMERICA AND CHARLES GUAGLIANO SOUGHT BY THE COMPLAINANTS.

13. THE FACT IS THAT THE REAL ISSUE GIVING RISE TO THE PRESENT COMPLAINTS AROSE WHEN GAMBIN BROTHERS LIMITED ASSIGNED CERTAIN WORK TO MEMBERS OF THE RESPONDENT UNION RATHER THAN TO MEMBERS OF THE COMPLAINANT UNIONS. IN OTHER WORDS, THE CENTRAL PROBLEM INVOLVED IN THE COMPLAINTS IS A JURISDICTIONAL DISPUTE. THIS BEING THE CASE, THE COMPLAINANTS MUST SEEK THEIR RELIEF BY WAY OF A COMPLAINT MADE UNDER SECTION 66 OF THE ACT, THE SECTION SPECIFICALLY DESIGNED TO DEAL WITH SUCH PROBLEMS. BY MAKING THEIR COMPLAINTS UNDER SECTION 65, THE COMPLAINANTS HAVE SOUGHT TO EVADE A DETERMINATION OF THE WORK ASSIGNMENT DISPUTE IN ISSUE. IT IS ONLY BY A DETERMINATION OF THAT DISPUTE ON ITS MERITS, HOWEVER, THAT THE BOARD IS IN A POSITION AND HAS THE AUTHORITY UNDER SUBSECTION (3) OF SECTION 66 TO GRANT THE CEASE AND DESIST ORDERS WITH RESPECT TO THE RESPONDENTS SOUGHT BY THE COMPLAINANTS.

14. ACCORDINGLY, FOR ALL OF THE REASONS SET OUT IN THIS DECISION, THE COMPLAINTS OF THE COMPLAINANTS MUST BE DISMISSED.

DECISION OF BOARD MEMBER R. W. TEAGLE:

AUGUST 14, 1968.

I DISSENT.

I STRONGLY DISAGREE WITH THE MAJORITY DECISION THAT IT WILL NOT ENTERTAIN THIS APPLICATION UNDER SECTION 65 AS THERE ARE OTHER PROCEEDINGS AVAILABLE TO THE COMPLAINANTS WHICH PROVIDE THE REMEDIES AND RELIEF SOUGHT. IN MY VIEW THIS IS NOT THE CASE.

AS FAR AS THE RELIEF SOUGHT FOR THE SIX PERSONS WHO WERE EITHER REFUSED EMPLOYMENT OR CONTINUED IN EMPLOYMENT; THERE IS NO DOUBT THAT RELIEF MAY BE SOUGHT THROUGH ARBITRATION UNDER THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE INTERNATIONAL COUNCIL OF LATHERS, OF WHICH THE COMPLAINANTS ARE MEMBERS; AND GAMBIN BROTHERS LTD.

ARBITRATION, HOWEVER, WILL NOT GIVE RELIEF FOR THE OFFENCES AS REQUESTED IN THE COMPLAINT WHICH READS IN PART AS FOLLOWS:

"ON THE MORNING OF MONDAY, MAY 13 1968 AT THE PROJECT REFERRED TO IN PARAGRAPH 3 ABOVE, THE RESPONDENT GUAGLIANO, AN OFFICER OF THE RESPONDENT UNION, THREATENED BRUNO GAMBIN, PRESIDENT OF THE RESPONDENT GAMBIN THAT HE, GUAGLIANO, WOULD CAUSE ALL MEMBERS OF THE RESPONDENT UNION EMPLOYED ON THE SAID PROJECT TO CEASE WORK AND WITHDRAW THEREFROM IF THE WORK IN QUESTION WAS PERFORMED BY MEMBERS OF THE COMPLAINANT".

"AT SOME TIME SUBSEQUENT TO THE ASSIGNMENT OF THE SAID WORK TO THE MEMBERS OF THE COMPLAINANT AS AFORESAID, AND/OR BEFORE MAY 23RD 1968, THE RESPONDENT GUAGLIANO THREATENED JAMES SIMANDL AND AL POLIMAC, CONTRACT MANAGER AND PROJECT SUPERINTENDENT RESPECTIVELY OF THE RESPONDENT EASTERN OR ONE OF THEM OR OTHER OFFICIALS OF THE RESPONDENT, THAT UNLESS THE WORK IN QUESTION WAS ASSIGNED TO MEMBERS OF THE RESPONDENT UNION ALL MEMBERS OF THE RESPONDENT UNION EMPLOYED BY EASTERN ON THE SAID PROJECT WOULD CEASE WORK AND WITHDRAW THEREFROM."

"ON MONDAY, MAY 27TH, 1968 AT THE SAID PROJECT A STEWARD OF THE RESPONDENT UNION EMPLOYED BY THE RESPONDENT EASTERN THREATENED THE SAID RAY BURSEY (LATHER FOREMAN) THAT IF MEMBERS OF THE COMPLAINANT COMMENCED THE WORK IN QUESTION, MEMBERS OF THE RESPONDENT UNION WOULD WALK OFF THE PROJECT."

"ON MONDAY, MAY 27TH 1968 POLIMAC AND SIMANDL THREATENED FRANK, KENNETH WELLER (AN OFFICIAL OF LOCAL 97 OF THE WOOD, WIRE AND METAL LATHERS' INTERNATIONAL UNION WHO WAS ATTENDING ON BEHALF OF THE COMPLAINANT) BRUNO GAMBIN, GORDON BUTTLE AND THE RESPONDENT GAMBIN THAT IF THE LATTER ASSIGNED THE WORK IN QUESTION TO THE MEMBERS OF THE COMPLAINANT THEY WOULD CANCEL THE CONTRACT WITH CAMBIN IN SO FAR AS IT RELATED TO THE WORK IN QUESTION OR CHANGE THE SPECIFICATIONS SO AS TO ELIMINATE THE WORK."

PARAGRAPH 12 OF THE MAJORITY DECISION DECLARES THAT NO PRIME FACIE CASE HAS BEEN MADE AGAINST THE THREE NAMED RESPONDENTS EASTERN CONSTRUCTION, LOCAL 18 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND CHARLES GUAGLIANO, THAT THEY HAD VIOLATED SECTION 37, 50 AND 52.

IN THE INSTANT CASE GAMBIN BROTHERS LIMITED AND EASTERN CONSTRUCTION COMPANY LIMITED (HEREIN CALLED THE COMPANIES) ARE SPECIAL AGENTS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND CHARLES GUAGLIANO. ACTING ON BEHALF OF THEIR PRINCIPALS THEY HAVE ALLEGEDLY LAID OFF AND DISCRIMINATED AGAINST MEMBERS OF THE COMPLAINANTS. THE FACTUAL SITUATION AS ALLEGED, SATISFIES THE TESTS FOR THE EXISTENCE OF AN AGENCY RELATIONSHIP SUGGESTED BY POWELL THE FORM OF AGENCY (1952) p4.

- (i) THE COMPANIES HAVE BEEN INSTRUCTED TO REPRESENT THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA AND CHARLES GUAGLIANO.
- (ii) THE COMPANIES DID NOT MERELY STAND IN THE SHOES OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND CHARLES GUAGLIANO BUT ACTED FOR THEM.
- (iii) THE RESULT OF THE COMPANIES ACTING FOR THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND CHARLES GUAGLIANO HAS AFFECTED THE LEGAL RELATIONSHIP BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA AND THE DISCRIMINATED MEMBERS OF THE COMPLAINANTS.

THE PRINCIPALS ARE LIABLE FOR THE WRONGS COMMITTED BY THE AGENTS WITHIN THE SCOPE OF THEIR AUTHORITY (IN THE INSTANT CASE, THESE ALLEGED WRONGS ARE VIOLATIONS OF THE LABOUR RELATIONS ACT), SEE FOR EXAMPLE ASHTON & SPIERS (1893) 9 TLR 606 (C.A.). THE AUTHORITIES WHICH SUPPORT THE EXISTENCE OF AN AGENCY RELATIONSHIP IN THE INSTANT CASE ARE WELL ESTABLISHED IN THE COMMON LAW. THUS THE RELATIONSHIP OF AGENCY ARISES WHENEVER ONE PERSON, CALLED "THE AGENT" HAD AUTHORITY, EXPRESS OR IMPLIED, TO ACT ON BEHALF OF ANOTHER, CALLED "THE PRINCIPAL",

AND CONSENTS SO TO ACT, SEE BROOKS & BOOL (1928) 2 KB 578. THE COMMON LAW DOES NOT REQUIRE FORMAL EVIDENCE OF THE APPOINTMENT OF AN AGENT, SEE WIGGINS & PEPPIN (1839) 2 BEAR 403.

IN MY OPINION, AS THE COMPANIES WERE ACTING AS AGENTS FOR THE PRINCIPALS LOCAL 18 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA AND CHARLES GUAGLIANO, THEY INTIMIDATED AND COERCED THE COMPLAINANTS IN VIOLATION OF SECTION 50A AND 52 AND ALSO INTERFERED WITH THEIR RIGHTS UNDER THE LABOUR RELATIONS ACT TO BELONG TO THE UNION OF THEIR CHOICE AND TO WORK IN ACCORDANCE WITH THEIR COLLECTIVE AGREEMENT. IF IT WERE NOT FOR THE INTIMIDATION AND COERCION OF CHARLES GUAGLIANO AND LOCAL 18 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, THE COMPLAINANTS WOULD BE STILL CARRYING OUT THE WORK ASSIGNED TO THEM BY GAMBIN.

WITHOUT MAKING ANY FINDING ON THE PROPER ASSIGNMENT IN THIS CASE, BUT ASSUMING THE WORK BELONGS TO THE CARPENTERS UNION, THE ACTION OF THE CARPENTERS UNION IS ALL THE MORE REPREHENSIBLE SINCE THERE IS A REMEDY AVAILABLE TO IT UNDER SECTION 66. THE COMPLAINANTS HAD THE ASSIGNMENT OF THE WORK IN THE FIRST INSTANCE, AND IT IS A STRANGE PROCEDURE THAT IF THEY BY INTIMIDATION LOSE IT THEY MUST MAKE AN APPLICATION UNDER SECTION 66 TO GET IT BACK. IT WAS UP TO THE CARPENTERS UNION TO FILE A COMPLAINT UNDER SECTION 66 OF THE LABOUR RELATIONS ACT IF THEY FELT THE WORK IN DISPUTE BELONGED TO THEM.

THE COMPLAINANTS ARE ENTITLED, IN MY OPINION, TO PROCEED WITH THEIR APPLICATION UNDER SECTION 65 TO OBTAIN A CEASE AND DESIST ORDER PREVENTING THE RESPONDENTS FROM ENGAGING IN THE ALLEGED ACTIVITY WHICH IS CONTRARY TO THE LABOUR RELATIONS ACT. THE RESPONDENT CARPENTERS UNION SHOULD HAVE MADE AN APPLICATION UNDER SECTION 66 OF THE LABOUR RELATIONS ACT PRIOR TO THEIR UNLAWFUL ACTIVITY. THE COMPLAINANT UNION HAD NO REASON TO BRING AN APPLICATION TO THIS OR ANY BOARD. AT THAT STAGE THE CARPENTERS UNION WAS IN A POSITION TO MAKE AN APPLICATION UNDER SECTION 66 RATHER THAN ENGAGING IN UNLAWFUL ACTIVITY.

THE MAJORITY DECISION DECLARES THAT THERE IS NO PROVISION IN SECTION 65 FOR MAKING THE TYPE OF CEASE AND DESIST ORDER REQUESTED. IN MY OPINION THE BOARD IF IT FINDS THE ACT HAS BEEN VIOLATED HAS WIDE POWERS UNDER SECTION 65(4), IN FACT WIDER POWERS TO ISSUE A CEASE AND DESIST ORDER THAN UNDER 66.

S.65(4)(A) -- "IT SHALL DETERMINE WHAT, IF ANYTHING, THE EMPLOYER, OTHER PERSON OR TRADE UNION SHALL DO OR REFRAIN FROM DOING WITH RESPECT THERETO,"

THE MAJORITY DECISION ALSO DECLARES THAT WHERE THERE IS AN ALTERNATE REMEDY SUCH AS ARBITRATION OR ON APPLICATION UNDER SECTION 66, THEY SHOULD BE USED. SECTION 66 HAS BEEN DEALT WITH ABOVE. AS TO THE ALTERNATE PROCEDURE OF ARBITRATION, A PROCEDURE UNDER ARBITRATION WILL NOT GIVE RELIEF TO THE COMPLAINANTS AGAINST THE ALLEGED ACTIONS OF THE CARPENTERS UNION AND CHARLES GUAGLIANO AND EASTERN CONSTRUCTION. IN THE HAYES-DANA CASE, O.L. R.B. MONTHLY REPORT, APRIL 1968, PAGE 89, ONE OF THE ALLEGATIONS MADE WAS - "IT IS ALLEGED THAT HAYES-DANA, BY ITSELF AND ITS AGENTS, THE PERFECT CIRCLE COMPANY LTD. AND V.N.G. AUTO PARTS LIMITED, REFUSED TO EMPLOY OR TO CONTINUE TO EMPLOY THE AGGRIEVED PERSONS BECAUSE OF THEIR MEMBERSHIP IN THE UNITED STEELWORKERS OF AMERICA AND IN ORDER TO AVOID THE EFFECTS OF THE ABOVE NOTED TERM OF THE COLLECTIVE AGREEMENT".

AT THE TIME OF THE APPLICATION UNDER SECTION 65 OF THE ACT THERE WAS AN ARBITRATION SET UP BETWEEN PERFECT CIRCLE, THE EMPLOYER, AND THE UNITED STEELWORKERS OF AMERICA. THIS ARBITRATION COULD NOT AFFECT HAYES-DANA. ONE OF THE ALLEGATIONS WAS THAT HYES-DANA WAS THE UNDISCLOSED PRINCIPAL OF PERFECT CIRCLE AND THE APPLICATION UNDER SECTION 65 HAS BEEN LISTED FOR HEARING. I FIND THAT THE HAYES-DANA CASE AND THIS CASE INVOLVE PARALLEL SITUATIONS.

TO DENY THE COMPLAINANT'S REQUEST IN THIS MATTER IS TANTA-MOUNT TO THE BOARD ABDICATING ITS JURISDICTION. TO PUT IT ANOTHER WAY, WHAT THE MAJORITY DECISION IS SAYING IS THAT THE END JUSTIFIES THE MEANS WHETHER THE MEANS ARE LAWFUL OR UNLAWFUL.

FOR THE ABOVE REASONS I WOULD PROCESS THIS COMPLAINT UNDER SECTION 65 FOR THE RELIEF SOUGHT.

INDEXED ENDORSEMENTS - SECTION 79(2)

13428-67-M: OFFICE AND PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION, CLC, LOCAL 418 (TRADE UNION) V. DOMTAR PULP & PAPER LIMITED (EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHARIMAN, AND BOARD MEMBERS
E. BOYER AND H. F. IRWIN.

DECISION OF THE BOARD: AUGUST 22, 1968.

1. BY LETTER DATED JULY 24TH, 1968, THE SOLICITORS FOR H. A. PLUMLEY, AN EMPLOYEE OF THE EMPLOYER, REQUESTED THE BOARD TO SUPPLY THEM WITH: A COPY OF THE CHIEF EXAMINER'S REPORT; A TRANSCRIPT OF THE PROCEEDINGS AND EVIDENCE; A COPY OF THE ACTUAL DECISION; AND ANY OTHER INFORMATION THAT MIGHT BE USEFUL AND WHICH THE BOARD IS AT LIBERTY TO DISCLOSE.

2. HAVING REGARD TO THE FACT THAT THE ABOVE-NAMED EMPLOYEE WAS A SUBJECT OF EXAMINATION IN THE INQUIRY CONDUCTED BY THE BOARD'S EXAMINER AND IS ONE WHOSE INTEREST MAY BE AFFECTED, THE REGISTRAR IS DIRECTED TO FORWARD TO HIS SOLICITORS A COPY OF THE REPORT OF THE EXAMINER DATED DECEMBER 1ST, 1967, AND OF THE DECISION OF THE BOARD HEREIN DATED FEBRUARY 6TH, 1968. THERE IS NO TRANSCRIPT OF PROCEEDINGS AND EVIDENCE OTHER THAN THE REPORT OF THE EXAMINER. IT SHOULD BE NOTED THAT THE BOARD PANEL IN THIS MATTER ATTENDED AT THE PLANT, TOGETHER WITH REPRESENTATIVES OF THE UNION AND MANAGEMENT, TO VIEW AND DISCUSS THE OPERATIONS CONCERNED PRIOR TO THE ISSUE OF THE SAID DECISION.

3. FOR THE INFORMATION OF ALL PARTIES AND BY WAY OF RESPONSE TO A REQUEST OF THE EMPLOYER FOR REASONS, THE BOARD DIRECTS THE ATTENTION OF THE PARTIES TO ITS DECISION IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE REPORTED IN ONTARIO LABOUR RELATIONS BOARD MONTHLY REPORT FOR SEPTEMBER, 1966, AT P. 379, WHICH SETS OUT THE CRITERIA APPLIED BY THE BOARD IN THIS AND SIMILAR CASES.

14981-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 524 (APPLICANT)
V. THE WELLAND BOARD OF EDUCATION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: AUGUST 29, 1968.

1. THIS IS AN APPLICATION MADE PURSUANT TO SECTION 79(2) OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT IN ITS APPLICATION ALLEGES THAT IT IS A PARTY TO A COLLECTIVE AGREEMENT WITH THE RESPONDENT EFFECTIVE FROM JANUARY 1ST, 1967 TO DECEMBER 31ST, 1968. THE SCOPE CLAUSE OF THAT AGREEMENT WHICH WAS FILED WITH THE BOARD PROVIDES THAT THE RESPONDENT RECOGNIZES THE APPLICANT AS THE SOLE AND EXCLUSIVE BARGAINING AGENT OF ALL OF ITS OFFICE EMPLOYEES SAVE AND EXCEPT OFFICE MANAGER, THE PURCHASING AGENT, THE SECRETARY TO THE OFFICE MANAGER, THE SECRETARY TO THE BUSINESS ADMINISTRATOR AND PERSONS ABOVE THE RANK OF OFFICE MANAGER AND PURCHASING AGENT. ACCORDING TO THE APPLICANT, THE RESPONDENT ADVERTISED IN THE LOCAL NEWSPAPER APPROXIMATELY NINE WEEKS PRIOR TO THE MAKING OF THE INSTANT APPLICATION FOR FOUR POSITIONS UNDER THE CLASSIFIED NAME OF "ASSISTANT TO THE LIBRARIAN". THE APPLICANT SUBMITS THAT THE PERSONS HIRED IN THIS CLASSIFICATION FALL WITHIN THE PROVISIONS OF THE ABOVE COLLECTIVE AGREEMENT. THE RESPONDENT FOR ITS PART SUBMITS THAT THE POSITION OF "ASSISTANT TO THE LIBRARIAN" DOES NOT COME WITHIN THE SCOPE OF THE AGREEMENT.

3. SECTION 79(2) OF THE ACT READS AS FOLLOWS:

IF, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT OR DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT, A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES.

IT IS CLEAR FROM THE APPLICATION THAT NO ISSUE HAS ARISEN DURING THE OPERATION OF THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE PARTIES AS TO WHETHER THE PERSONS HIRED FOR THE POSITION AS "ASSISTANT TO THE LIBRARIAN" ARE EMPLOYEES WITHIN THE MEANING OF THE LABOUR RELATIONS ACT. RATHER THE ISSUE IS WHETHER THE CLASSIFICATION IN QUESTION FALLS WITHIN THE BARGAINING UNIT COVERED BY THE COLLECTIVE AGREEMENT. THE APPLICATION ACCORDINGLY DOES NOT FALL WITHIN THE PURVIEW OF SECTION 79(2) OF THE ACT. (SEE THE STEEL COMPANY OF CANADA LIMITED HILTON WORKS CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966, P. 755 AND P. 760; CANADIAN CAR FORT WILLIAM DIVISION HAWKER SIDDELEY CANADA LTD. CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1966 P. 764; CITY OF ST. CATHARINES CASE, O.L.R.B. MONTHLY REPORT, JULY 1966 P. 220 AND THE TOWNSHIP OF SCARBOROUGH CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 433 AND JANUARY 1967, P. 842.

4. THE APPLICANT, IN OUR OPINION, HAS FAILED TO MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY WHICH IT IS REQUESTING. ACCORDINGLY, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE AND REGULATIONS, THIS APPLICATION IS DISMISSED.

INDEXED ENDORSEMENTS - JURISDICTIONAL DISPUTES

14500(A)-68-JD: ABITIBI PAPER COMPANY LTD. STURGEON FALLS DIVISION (COMPLAINANT) v. UNITED PAPER MAKERS AND PAPER WORKERS LOCAL 135 - A.F.L. - C.I.O. INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS - LOCAL NO. 71 A.F.L. - C.I.O. (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS R. W. TEAGLE AND E. BOYER.

APPEARANCES AT THE HEARING: R. T. CARTER, B.C. BARRINGTON, F. H. CLARKE, W. E. FORTIN FOR THE COMPLAINANT, T. H. CURLEY, R. RENDELL, J. LYNCH AND L. MACLEAN, W. ANDERSON, N. PAXTON, J. SENEAL FOR THE RESPONDENTS.

DECISION OF THE BOARD: AUGUST 29, 1968.

1. AT THE SECOND HEARING OF THE BOARD IN THIS MATTER, THE REPRESENTATIVE OF THE UNITED PAPER MAKERS AND PAPER WORKERS LOCAL 135, CHALLENGED THE BOARD'S JURISDICTION TO MAKE A DETERMINATION ON THE COMPLAINT CONCERNING A WORK ASSIGNMENT MADE BY THE COMPLAINANT. MORE PARTICULAR IT WAS SUBMITTED THAT ARTICLE 4 OF THE CURRENT COLLECTIVE AGREEMENT DATED MAY 1ST, 1965 WHICH IS BINDING UPON ALL OF THE PARTIES TO THIS PROCEEDING, PROVIDES FOR THE SETTLEMENT OF ANY JURISDICTIONAL DISPUTE ARISING BETWEEN THE RESPONDENT UNIONS. THE SAID REPRESENTATIVE ARGUED THAT IN THESE CIRCUMSTANCES SUBSECTION (8) OF SECTION 66 IS APPLICABLE AND THAT THE BOARD ACCORDINGLY IS WITHOUT JURISDICTION TO DEAL WITH THE COMPLAINT.

2. ARTICLE 4 OF THE COLLECTIVE AGREEMENT REFERRED TO IN THE ABOVE PARAGRAPH READS AS FOLLOWS:

THE COMPANY WILL NOT BE ASKED TO ACT UPON ANY MATTERS REGARDING JURISDICTION BETWEEN THE INTERNATIONAL BROTHERHOODS HAVING RECOGNIZED LOCALS IN THE MILL. THE QUESTION OF JURISDICTION SHALL CONFORM TO THE REGULATIONS AS FIXED BY THE AMERICAN FEDERATION OF LABOUR - CONGRESS OF INDUSTRIAL ORGANIZATIONS.

3. THE EFFECT OF SUBSECTION (8) OF SECTION 66 IS THAT NO COMPLAINT CAN BE MADE UNDER SUBSECTION (1) BY AN EMPLOYER OR TRADE UNION THAT HAS ENTERED INTO A COLLECTIVE AGREEMENT THAT CONTAINS A PROVISION REQUIRING THE REFERENCE TO A TRIBUNAL MUTUALLY SELECTED BY THE PARTIES TO THE AGREEMENT THAT CAN RESOLVE AND MAKE A BINDING SETTLEMENT OF ANY DIFFERENCE BETWEEN THE PARTIES THAT ARISES CONCERNING A WORK ASSIGNMENT.

4. AN IDENTICAL CHALLENGE WAS MADE TO THE BOARD'S JURISDICTION IN THE PROVINCIAL PAPER, LIMITED, PORT ARTHUR DIVISION CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1967, P. 672. IN THAT CASE THERE WAS A COLLECTIVE AGREEMENT IN EFFECT WHICH WAS BINDING UPON THE COMPLAINANT COMPANY AND THE TWO NAMED RESPONDENT UNIONS. THAT AGREEMENT CONTAINED AN ARTICLE RELATING TO JURISDICTION SIMILAR TO THAT QUOTED IN PARAGRAPH 2. IN THE LATTER CASE THE RESPONDENT TRADE UNION WHICH CHALLENGED THE BOARD'S JURISDICTION, UPON INQUIRY BY THE BOARD, CONCEDED THAT IT WAS NOT AWARE OF ANY TRIBUNAL ESTABLISHED BY THE AFL - CIO WHICH HAD THE AUTHORITY TO RESOLVE THE WORK ASSIGNMENT IN DISPUTE. IN THESE CIRCUMSTANCES, THE BOARD FOUND THAT SUBSECTION (8) OF SECTION 66 OF THE ACT HAD NO APPLICATION AND THAT THE BOARD ACCORDINGLY HAD JURISDICTION TO DEAL WITH THE COMPLAINT UNDER SUBSECTION (1) OF SECTION 66.

5. HAVING REGARD TO THE BOARD'S DECISION IN THE PROVINCIAL PAPER, LIMITED, CASE [SUPRA] THE BOARD DIRECTS THAT THE RESPONDENT UNITED PAPER MAKERS AND PAPER WORKERS LOCAL 135 FILE WITH THE BOARD FORTHWITH DOCUMENTARY EVIDENCE TO DEMONSTRATE THAT THERE EXISTS IN AMERICAN FEDERATION OF LABOUR - CONGRESS OF INDUSTRIAL ORGANIZATIONS A TRIBUNAL WITH THE AUTHORITY TO RESOLVE THE WORK ASSIGNMENT IN DISPUTE BETWEEN THE TWO RESPONDENT UNIONS.

6. THE COMPLAINANT AND THE RESPONDENT INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS - LOCAL 71 WILL BE ADVISED OF SUCH EVIDENCE AS IS FILED AND WILL BE GIVEN AN OPPORTUNITY TO MAKE SUCH REPRESENTATIONS THEY DEEM ADVISABLE WITH REGARD TO SUCH EVIDENCE.

14920(A)-68-JD: BEER PRECAST CONCRETE LIMITED (COMPLAINANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 AND THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 736 (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND H. F. IRWIN.

APPEARANCES AT THE HEARING: B. W. BINNING AND W. WHITE FOR THE COMPLAINANT, R. KOSKIE AND T. NEIL FOR LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506, A. E. GOLDEN, P. A. THOMSON, D. ALDER AND W. BROOK FOR THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION NUMBER 736, D. WILLIAMS FOR BRICKLAYERS' UNION LOCAL #3.

DECISION OF THE BOARD: AUGUST 6, 1968.

1. THE COMPLAINANT IN ITS COMPLAINT HAS REQUESTED THAT THE BOARD MAKE AN INTERIM ORDER WITH RESPECT TO THE ASSIGNMENT OF WORK WHICH IS IN DISPUTE BETWEEN THE COMPLAINANT AND THE RESPONDENT TRADE UNIONS.

2. HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, THE BOARD DEEMS IT ADVISABLE IN ALL THE CIRCUMSTANCES TO MAKE THE FOLLOWING INTERIM ORDER:

THE COMPLAINANT SHALL ASSIGN THE WORK OF ERECTING PRECAST WALL CLADDING ON THE UNIVERSITY OF GUELPH PHYSICAL SCIENCE COMPLEX, STAGE #1, IN ACCORDANCE WITH THE COMPLAINANT'S ORIGINAL ASSIGNMENT, TO MEMBERS OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506.

THIS ORDER SHALL BE COME EFFECTIVE FORTHWITH AND SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS THE BOARD ISSUES A FURTHER DIRECTION.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

14922-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493
(APPLICANT) v. FARQUHAR CONSTRUCTION LIMITED (RESPONDENT).

5. THE JOB SITE IN THIS CASE IS AT STURGEON FALLS, ONTARIO. AS AN INTERIM MEASURE THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF SPRINGER, CALDWELL, BADGEROW, FIELD, GRANT AND PEDLEY, EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF GRANT AND PEDLEY WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(AUGUST 12, 1968).

14969-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (APPLICANT) v. W. D. LAFLAMME LIMITED (RESPONDENT) v. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2466 (INTERVENER).

6. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR THE CARPENTERS AND CARPENTERS' APPRENTICES ON A JOB SITE AT RIDEAU FERRY IN THE COUNTY OF LANARK. THE RESPONDENT AND THE INTERVENER SUBMIT THAT THEY ARE PARTIES TO A CURRENT COLLECTIVE AGREEMENT, COPIES OF WHICH WERE FILED WITH THE BOARD. THE SCOPE OF THIS AGREEMENT COVERS ALL OF THE COUNTY OF RENFREW AND FORTY TOWNSHIPS IN THE DISTRICT OF NIPISSING. THIS AGREEMENT DOES NOT COVER ANY PART OF BOARD GEOGRAPHIC AREA No. 13 WHICH ENCOMPASSES THE COUNTY OF LANARK AND CERTAIN TOWNSHIPS IN THE COUNTIES OF LEEDS AND GRENVILLE. ACCORDINGLY THE COLLECTIVE AGREEMENT IS NOT A BAR TO THE INSTANT APPLICATION.

7. THE RESPONDENT SUBMITS THAT THE TWELVE EMPLOYEES ON ITS LIST WHICH INCLUDES BOTH LABOURERS AND CARPENTERS SHOULD BE INCLUDED UNDER ITS COLLECTIVE AGREEMENT WITH THE INTERVENER. SINCE THE GEOGRAPHIC SCOPE OF THAT AGREEMENT DOES NOT ENCOMPASS THE COUNTY OF LANARK WHERE THE JOB SITE IN QUESTION IS LOCATED, THERE ARE NO GROUNDS WHATSOEVER FOR INCLUDING EITHER THE CARPENTERS OR THE LABOURERS WORKING ON THE JOB SITE AT RIDEAU FERRY UNDER THE SAID AGREEMENT. FURTHER THE BOARD SEES NO REASON TO LIST THIS APPLICATION FOR HEARING ON THE BASIS OF THE MATTERS RAISED BY THE RESPONDENT IN ITS REPLY.

(AUGUST 29, 1968).

14984-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL UNION 93 (APPLICANT) V. W. D. LAFLAMME LIMITED (RESPONDENT).

5. THE APPLICANT FILED A DULY COMPLETED FORM 54, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, CONSTRUCTION INDUSTRY. THE APPLICANT ALSO FILED ONE COMBINATION APPLICATION FOR MEMBERSHIP AND RECEIPT AND FIVE CERTIFICATES OF MEMBERSHIP. WHILE ALL OF THE CERTIFICATES BEAR THE SIGNATURES OF THE MEMBERS ON WHOSE BEHALF THEY ARE SUBMITTED, FOUR OF THE FIVE CERTIFICATES DO NOT BEAR THE SIGNATURE OF ANY OFFICER OF THE APPLICANT INDICATING THAT THE CERTIFICATES OF MEMBERSHIP HAVE BEEN CHECKED AND CERTIFIED AS BEING CORRECT. WITH REGARD TO THESE FOUR CERTIFICATES OF MEMBERSHIP THE BOARD FINDS THAT THEY ARE DEFECTIVE TO SUCH A SUBSTANTIAL DEGREE THAT NO EFFECT CAN BE GIVEN TO THEM. ACCORDINGLY THEY CANNOT BE CONSIDERED AS EVIDENCE OF MEMBERSHIP IN THE APPLICANT.

(August 29, 1968).

STATISTICAL TABLES FOR AUGUST 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	AUGUST 1968	1ST 5 MONTHS OF FISCAL YEAR 1968-69	1967-68
I. CERTIFICATION	78	437	428
II. DECLARATION TERMINATING BARGAINING RIGHTS	10	20	37
III. DECLARATION OF SUCCESSOR STATUS	-	9	5
IV. DECLARATION THAT STRIKE UNLAWFUL	-	18	26
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	3	11
VI. CONSENT TO PROSECUTE	5	45	63
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	9	80	69
VIII. MISCELLANEOUS	<u>5</u>	<u>29</u>	<u>22</u>
TOTAL	<u>107</u>	<u>641</u>	<u>661</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	AUGUST 1968	1ST 5 MONTHS OF FISCAL YEAR 1968-69	1967-68
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	70	463	418

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	AUGUST 1968	1ST 5 MONTHS OF 1968-69	FISCAL YEAR 1967-68
I. CERTIFICATION	84	446	417
II. DECLARATION TERMINATING BARGAINING RIGHTS	4	20	29
III. DECLARATION OF SUCCESSOR STATUS	-	11	5
IV. DECLARATION THAT STRIKE UNLAWFUL	1	17	25
V. DECLARATION THAT LOCK- OUT UNLAWFUL	-	3	11
VI. CONSENT TO PROSECUTE	3	45	46
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	11	81	74
VIII. MISCELLANEOUS	<u>1</u>	<u>28</u>	<u>36</u>
TOTAL	<u>104</u>	<u>651</u>	<u>643</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>AUGUST</u> <u>1968</u>	<u>1ST 5 MTHS</u> <u>1968-69</u>	<u>FISCAL YR.</u> <u>1967-68</u>	<u>AUGUST</u> <u>1968</u>	<u>1ST 5 MTHS</u> <u>1968-69</u>	<u>FISCAL</u> <u>1967-</u>
<u>I. CERTIFICATION</u>						
GRANTED	56	301	307	998	10226	8438
DISMISSED	20	103	80	394	2694	4017
WITHDRAWN	<u>8</u>	<u>42</u>	<u>30</u>	<u>105</u>	<u>721</u>	<u>551</u>
TOTAL	<u>84</u>	<u>446</u>	<u>417</u>	<u>1497</u>	<u>13641</u>	<u>13006</u>
 <u>II. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	1	10	15	3	283	187
DISMISSED	2	7	13	11	52	640
WITHDRAWN	<u>1</u>	<u>3</u>	<u>1</u>	<u>27</u>	<u>58</u>	<u>1</u>
TOTAL	<u>4</u>	<u>20</u>	<u>29</u>	<u>41</u>	<u>393</u>	<u>828</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>AUGUST</u>	<u>1ST 5 MTHS OF FISCAL YR.</u>	
		<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	1	1
	DISMISSED	-	2	2
	WITHDRAWN	<u>1</u>	<u>14</u>	<u>22</u>
	TOTAL	<u>1</u>	<u>17</u>	<u>25</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	1	1
	WITHDRAWN	<u>-</u>	<u>2</u>	<u>10</u>
	TOTAL	<u>-</u>	<u>3</u>	<u>11</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	1	8	5
	DISMISSED	-	9	4
	WITHDRAWN	<u>2</u>	<u>28</u>	<u>37</u>
	TOTAL	<u>3</u>	<u>45</u>	<u>46</u>
VI.	<u>COMPLAINT OF UNFAIR</u>			
	<u>PRACTICE IN EMPLOYMENT</u>			
	<u>(SECTION 65)</u>			
	GRANTED	1	3	-
	DISMISSED	4	24	4
	WITHDRAWN	<u>6</u>	<u>54</u>	<u>11</u>
	TOTAL	<u>11</u>	<u>81</u>	<u>15</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>AUGUST</u> <u>1968</u>	<u>1ST 5 MTHS FISCAL YR.</u> <u>1968-69</u>	<u>1967-68</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	7	8
POST-HEARING VOTE	-	15	23
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	2	5
POST-HEARING VOTE	3	14	14
BALLOTS NOT COUNTED	-	-	-
TOTAL	<u>3</u>	<u>38</u>	<u>50</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>AUGUST</u> <u>1968</u>	<u>1ST 5 MTHS FISCAL YR.</u> <u>1968-69</u>	<u>1967-68</u>
*RESPONDENT UNION SUCCESSFUL	-	-	1
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>7</u>	<u>8</u>
TOTAL	<u>1</u>	<u>7</u>	<u>9</u>

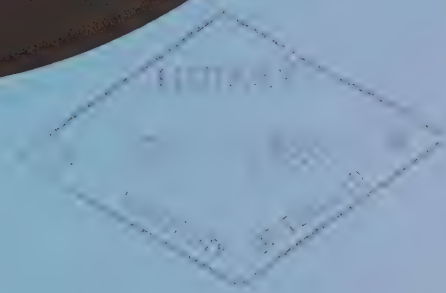
*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING SEPTEMBER 1968

BARGAINING AGENTS CERTIFIED DURING SEPTEMBER

NO VOTE CONDUCTED

14222-67-R: A. & M. EMPLOYEES' ASSOCIATION (APPLICANT) V. ADDRESSO-
GRAPH-MULTIGRAPH OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOLLINGER ROAD PLANT AND
BERMONDSEY ROAD PLANT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN,
PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(82 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14556-68-R: TORONTO PRINTING PRESSMEN & ASSISTANTS' UNION No. 10
(APPLICANT) V. RONALDS-FEDERATED LIMITED (RESPONDENT) V. LITHOGRAPHERS
AND PHOTOENGRAVERS INTERNATIONAL UNION (INTERVENER).

UNIT: "ALL EMPLOYEES EMPLOYED IN THE ROTARY PRESS ROOM AND SHEETFEED
PRESS ROOM OF THE RESPONDENT IN THE COUNTY OF YORK, SAVE AND EXCEPT
FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (16 EMPLOYEES IN THE
UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD FINDS THAT JOGGERS
EMPLOYED IN THE PRESS ROOMS ARE INCLUDED IN THE BARGAINING UNIT.

14593-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CRANE CANADA
LIMITED (RESPONDENT) V. INTERNATIONAL MOLDERS & ALLIED WORKERS UNION
A.F.L.-C.I.O.-C.L.C. (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF
AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(95 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER
DATED JULY 3RD, 1968 AND THE REPRESENTATIONS OF THE PARTIES)

(SEE INDEXED ENDORSEMENT PAGE 570).

14751-68-R: NURSES' ASSOCIATION OF ST. JOSEPH'S HOSPITAL (APPLICANT)
V. THE SISTERS OF ST. JOSEPH OF THE DIOCESE OF LONDON IN ONTARIO
(RESPONDENT). (344 EMPLOYEES).

UNIT #1: "ALL LAY REGISTERED AND GRADUATE NURSES EMPLOYED IN A NURSING CAPACITY BY THE RESPONDENT AT ITS ST. JOSEPH'S HOSPITAL AT LONDON, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, NURSE IN CHARGE INTENSIVE CARE NURSERY, CHARGE NURSE OF DIALYSIS UNIT, NURSE IN CHARGE CENTRAL SUPPLY, AND NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

(HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE AGREEMENT OF THE PARTIES)

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE EMPLOYEE HEALTH NURSE AND NURSES ON THE INTRAVENOUS THERAPY TEAM ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #1 AND THAT THE RADIO-ISOTOPE NURSE IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #1.

UNIT #2: "ALL LAY REGISTERED AND GRADUATE NURSES REGULARLY EMPLOYED IN A NURSING CAPACITY BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK AT ITS ST. JOSEPH'S HOSPITAL AT LONDON, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE, NURSE IN CHARGE INTENSIVE CARE NURSERY, CHARGE NURSE OF DIALYSIS UNIT, NURSE IN CHARGE CENTRAL SUPPLY, AND EMPLOYEES INCLUDED IN BARGAINING UNIT #1.

(HAVING REGARD TO ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE AGREEMENT OF THE PARTIES)

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE EMPLOYEE HEALTH NURSE AND NURSES ON THE INTRAVENOUS THERAPY TEAM ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #2 AND THAT THE RADIO-SIOTOPE NURSE REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #2.

14768-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY, OPERATING AS HUDSON'S BAY COMPANY (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, OFFICE STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (35 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT CASUAL HELP ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 592).

14782-68-R: THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA - (LOCAL 628) (APPLICANT) V. CANADIAN COMSTOCK COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRON WORKERS, LOCAL 759 (INTERVENER #1) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #2) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER #3).

UNIT: "ALL PLUMBERS, STEAMFITTERS, PIPEFITTERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMEN." (35 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD DECLARED THAT WELDERS WORKING AT PLUMBING, STEAMFITTING AND PIPEFITTING TRADES ARE EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

14932-68-R: LOCAL 403 OF THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L. -C.I.O.; C.L.C. (APPLICANT) V. CANADIAN CANNERS LIMITED, PLANT #24 (RESPONDENT).

UNIT: "ALL SEASONAL EMPLOYEES OF THE RESPONDENT AT ITS PLANT NO. 24 AT WATERFORD, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE, SALES AND LABORATORY STAFF, AND FIELDMEN." (29 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14939-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) V. G. A. BRAUN CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF WHITBY ENGAGED IN PLACING ON SITE OF MACHINERY AND EQUIPMENT, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (2 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 605).

14968-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SPACE CONDITIONING OF CANADA LTD. (RESPONDENT) V. LOCAL 46 - UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (51 EMPLOYEES IN THE UNIT).

14974-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. STAR CARTAGE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

14976-68-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. LEPAGE'S LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, CLERICAL STAFF, QUALITY CONTROL AND RESEARCH STAFF, SALESMEN, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR PER WEEK." (68 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14977-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 247 (APPLICANT) V. KINGSTON DODGE CHRYSLER (1963) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON ENGAGED IN MOTOR VEHICLE REPAIR SERVICES, SAVE AND EXCEPT FOREMEN OR ASSISTANT SERVICE MANAGERS, PERSONS ABOVE THE RANK OF FOREMAN OR ASSISTANT SERVICE MANAGER, SERVICE AND PARTS SALES CLERKS, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14978-68-R: THE LUMBER AND SAWMILL WORKERS' UNION, LOCAL 2995, OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL-CIO-CLC (APPLICANT) V. KEAN TRUCKS AND EQUIPMENT (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KAPUSKASING, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

14983-68-R: GENERAL TRUCK DRIVERS' UNION LOCAL 879, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. INDUSTRIAL DISPOSAL LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (14 EMPLOYEES IN THE UNIT).

14991-68-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. McDERMOTT METAL PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

14997-68-R: THE CUSTODIANS AND MAINTENANCE ASSOCIATION (APPLICANT)
V. WATERLOO PUBLIC SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT).

14998-68-R: THE CUSTODIANS AND MAINTENANCE ASSOCIATION (APPLICANT) V.
THE KITCHENER AND WATERLOO HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (54 EMPLOYEES IN THE UNIT).

14999-68-R: THE CUSTODIANS AND MAINTENANCE ASSOCIATION (APPLICANT) V.
THE KITCHENER AND DISTRICT PUBLIC SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES, AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (70 EMPLOYEES IN THE UNIT).

15008-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. PERMANENT FLOOR LAYING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

15010-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. EAST ELGIN DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AYLMER ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

15012-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. ROBERTSON-YATES CORPORATION (1966) LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(2 EMPLOYEES IN THE UNIT).

15013-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. CROWNFAB OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

15016-68-R: INTERNATIONAL UNION OF DISTRICT 50 U.M.W.A. (APPLICANT) V. ST. MARY'S CEMENT CO. LIMITED (RESPONDENT) V. UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF DARLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (38 EMPLOYEES IN THE UNIT).

15020-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. RENZETTI CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

15021-68-R: LOCAL UNION No. 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. A. C. MURPHY COMPANY LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15022-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. BLUE GIANT EQUIPMENT OF CANADA LTD. (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15023-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. T & D CONTRACTING COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

15024-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. CANADA WIRE AND CABLE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (18 EMPLOYEES IN THE UNIT).

15025-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CHRYSLER CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS INDUSTRIAL WASTE TREATMENT PLANT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

15026-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. INDUSTRIAL WELDING (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT)

15029-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ART LABORATORY FURNITURE LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15030-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 498 (APPLICANT) V. NEATE CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15034-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. GIULIANI BROTHERS & CO. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

15038-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (APPLICANT) V. KENWAY CONSTRUCTION CO. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LINCOLN, WELLAND AND HALDIMAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15039-68-R: INTERNATIONAL LADIES GARMENT WORKERS' UNION (APPLICANT) V. FORMFIT INTERNATIONAL, S.A. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS MANUFACTURING PLANT AT 34 WINGOLD AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, MECHANICS, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (19 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15040-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. C. SANSONE CONSTRUCTION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15044-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 572 (APPLICANT) V. POLLOCK-MCGIBBON LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

15045-68-R: BUILDING SERVICE EMPLOYEES' UNION, LOCAL 294 AFFILIATED WITH S.E.I.U. A.F.L., C.I.O., C.L.C. (APPLICANT) V. CENTRAL PARK LODGES OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (43 EMPLOYEES IN THE UNIT).

15046-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. BOSTON EXCAVATING AND GRADING (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (2 EMPLOYEES IN THE UNIT).

15050-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. W. D. LAFLAMME LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15055-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. RALPH VAN DYKE CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT #1: "ALL CONSTRUCTION LABOURERS AND CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WATERLOO SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL CONSTRUCTION LABOURERS AND CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15056-68-R: CENTRAL ONTARIO DISTRICT COUNCIL UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DINEEN CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15069-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. CAMERON & PHIN LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

15071-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WEST ELGIN DISTRICT HIGH SCHOOL Bd. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE STAFF, AND PERSONS COVERED BY A CERTIFICATE OF THE BOARD DATED JULY 19TH, 1968." (8 EMPLOYEES IN THE UNIT).

15072-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. PARNELL FOODS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE CATERING OF THE FORD MOTOR PLANT IN THE TOWNSHIP OF SOUTHWOLD, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, CAFETERIA MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15073-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. THE ROBERT MITCHELL CO. LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15077-68-R: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA AFL-CIO-CLC (APPLICANT) V. CANADIAN CHRISTMAS DECORATIONS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BOWMANVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (51 EMPLOYEES IN THE UNIT).

15078-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. MERIT AUTOMOTIVE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

15080-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. W.N. CONSTRUCTION (OTTAWA) LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

15084-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL 527 (APPLICANT) V. ARGO CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

15096-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. CANADIAN CONCRETE FORMS REGISTERED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (14 EMPLOYEES IN THE UNIT).

15109-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. POLLOCK-McGIBBON LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

15122-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1669 (APPLICANT) V. DURALL CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF THUNDER BAY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15127-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. BERGHOUT CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH, VICTORIA AND THE PROVISIONAL COUNTY OF HALIBURTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (13 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

14982-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ELECTRO PORCELAIN LIMITED (RESPONDENT) V. ELECTRO PORCELAIN WORKERS' ASSOCIATION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WATERLOO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (62 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

NUMBER OF PERSONS WHO CAST BALLOTS	57
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	50
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER ELECTRO PORCELAIN WORKERS' ASSOCIATION	6

15015-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. PEEL BLOCK COMPANY LIMITED (RESPONDENT) V. UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN CHINGUACOUSY TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	19
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	12
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	1

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

14697-68-R: LOCAL UNION 1966 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. JOHNSON CONTROLS LTD. (RESPONDENT) V. UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46 (INTERVENER #1) V. LOCAL 353, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (INTERVENER #2) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS PLANT ON BERMONDSEY ROAD IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT WITH THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 46, AND WITH LOCAL 353 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS." (33 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	26
NUMBER OF PERSONS WHO CAST BALLOTS	26
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

14827-68-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, SERVICE EMPLOYEES' INTERNATIONAL UNION, A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. ST. MARYS PUBLIC SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	3
NUMBER OF PERSONS WHO CAST BALLOTS	3
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	0

14942-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 18 (APPLICANT) V. EAGLEWOOD CONSTRUCTION CO. LIMITED (RESPONDENT) V. CHRISTIAN TRADE UNIONS OF CANADA (INTERVENER).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WENTWORTH AND THE TOWNSHIP OF NASSAGAWEYA AND THE TOWN OF BURLINGTON IN THE COUNTY OF HALTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING SEPTEMBER

NO VOTE CONDUCTED

14099-67-R: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. J. D. CARRIER SHOE CO. LTD. (RESPONDENT). (28 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 550).

14126-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. S.I.S. PROTECTION CO., A DIVISION OF SECURITY & INVESTIGATION SERVICES LTD. (RESPONDENT). (298 EMPLOYEES).

14142-67-R: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. CARSONI SHOE COMPANY LIMITED (RESPONDENT). (61 EMPLOYEES).

14345-67-R: THE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) V. THE GENERAL HOSPITAL OF PORT ARTHUR (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER). (68 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 555).

14346-67-R: THE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) V. MCKELLAR GENERAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER #1) V. OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL 81 (INTERVENER #2). (113 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 557).

14347-67-R: THE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) V. ST. JOSEPH'S GENERAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER). (59 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 558).

14567-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. S.I.S. PROTECTION CO., A DIVISION OF SECURITY & INVESTIGATIONS SERVICES LTD. (RESPONDENT). (5 EMPLOYEES).

14709-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. KNIGHT SECURITY GUARDS LIMITED (RESPONDENT). (17 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 580).

14771-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. KNIGHT SECURITY GUARDS LIMITED (RESPONDENT). (72 EMPLOYEES).

14853-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ALDBOROUGH TOWNSHIP PUBLIC SCHOOL AREA BOARD (RESPONDENT). (1 EMPLOYEE).

14911-68-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. DAAL SPECIALTIES (COLLINGWOOD) LIMITED (RESPONDENT) V. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (INTERVENER). (4 EMPLOYEES).

14913-68-R: UNITED PACKINGHOUSE FOOD & ALLIED WORKERS AFL-CIO-CLC (APPLICANT) V. UNITED DAIRY PRODUCERS CO-OPERATIVE LIMITED (RESPONDENT). (11 EMPLOYEES).

14947-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC (APPLICANT) V. SIEGEL FRUIT COMPANY LIMITED (RESPONDENT). (24 EMPLOYEES).

14973-68-R: GRAPHIC ARTS UNION NO. 669, OF THE INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. THE HAMILTON SPECTATOR, A DIVISION OF SOUTHAM PRESS LIMITED (RESPONDENT). (3 EMPLOYEES).

14979-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. M. HALLEE ASSOCIATES (RESPONDENT) V. GROUP OF EMPLOYEES). (14 EMPLOYEES).

15011-68-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. FORBES MOTORS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (55 EMPLOYEES).

15014-68-R: ASSOCIATION OF AIRCONDITIONING, VENTILATING AND HEATING SYSTEMS FIELD TESTING TECHNICIANS, LOCAL 163, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. AERODYNAMICS ENGINEERING AND TESTING LABORATORY LIMITED (RESPONDENT). (8 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 609).

15041-68-R: I.K.O. SURVICE EMPLOYEES ASSOCIATION (APPLICANT) V. I.K.O. SURVICES LIMITED (RESPONDENT). (14 EMPLOYEES).

15058-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS LOCAL UNION 721 (APPLICANT) V. LEADER MASONRY & FORMING LTD. (RESPONDENT). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13660-67-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA (APPLICANT) V. SHELL CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OIL BURNER MECHANICS AND HELPERS IN THE EMPLOY OF THE RESPONDENT AT METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR." (36 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS'	
LIST	28
NUMBER OF PERSONS WHO CAST BALLOTS	28
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	20

14244-67-R: INTERNATIONAL CHEMICAL WORKERS' UNION (APPLICANT) V. ALMA PAINT & VARNISH COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, RETAIL STORE EMPLOYEES, EMPLOYEES IN THE RESEARCH LABORATORY DEPARTMENT, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (99 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE RESEARCH LABORATORY DEPARTMENT IS COMPRISED OF EMPLOYEES CLASSIFIED AS CHEMISTS, LABORATORY TRAINEES, AND LABORATORY TECHNICIANS AND ASSISTANTS.

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	98
NUMBER OF PERSONS WHO CAST BALLOTS	96
BALLOTS SEGREGATED AND NOT COUNTED	2
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	48
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	45

(SEE INDEXED ENDORSEMENT PAGE 551).

14829-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. ALCAN DESIGN HOMES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS ALCAN UNIVERSAL HOMES DIVISION AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, NURSE AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (199 EMPLOYEES IN THE UNIT).

INDUSTRIAL ENGINEERS AND QUALITY CONTROL PERSONNEL ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	182
NUMBER OF PERSONS WHO CAST BALLOTS	181
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	77
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	103

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING SEPTEMBER

15032-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SOUTH EAST NORFOLK DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (14 EMPLOYEES).

15100-68-R: AUTOMOBILE SALESMEN'S ASSOCIATION (APPLICANT) V. CENTRAL CHRYSLER PLYMOUTH LTD. (RESPONDENT). (12 EMPLOYEES).

15105-68-R: AUTOMOBILE SALESMEN'S ASSOCIATION (APPLICANT) V. ALEXANDER AMBASSADOR LTD. (RESPONDENT). (6 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING SEPTEMBER

14954-68-R: LOWELL WALLER (APPLICANT) V. MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION NO. 647, AFFILIATE WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (17 EMPLOYEES). (GRANTED).

14964-68-R: RICHARD D. HAMILTON (APPLICANT) V. THE SIGN & PICTORIAL PAINTER'S LOCAL 1630 OF THE CITY OF TORONTO AND DISTRICT, OF THE BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, CITY OF TORONTO (RESPONDENT) V. SLIMLITE LIMITED (INTERVENER).

UNIT: "ALL EMPLOYEES OF SLIMLITE LIMITED IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (40 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	38
NUMBER OF PERSONS WHO CAST BALLOTS	38
NUMBER OF BALLOTS SEGREGATED AND	
NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF RESPONDENT	27
NUMBER OF BALLOTS MARKED AGAINST	
RESPONDENT	10

15002-68-R: JOHN R. SAVIGNY (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL NO. 504 (RESPONDENT). (2 EMPLOYEES). (GRANTED).

15094-68-R: FELIX COUTU (APPLICANT) V. THE RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, LOCAL 579, C.I.O. C.L.C. A.F.L. (RESPONDENT). (9 EMPLOYEES). (GRANTED).

15110-68-R: TERRANCE G. HAYES (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION (RESPONDENT). (34 EMPLOYEES). (DISMISSED).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS DISPOSED OF DURING

SEPTEMBER

14724-68-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DRUG TRADING COMPANY LIMITED (RESPONDENT). V. LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, LOCAL 847, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (PREDECESSOR TRADE UNION). (GRANTED).

14858-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 446, SAULT STE MARIE (APPLICANT) V. ALGOMA ORE DIVISION, THE ALGOMA STEEL CORPORATION LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING
SEPTEMBER

14184-67-U: THE GOODYEAR TIRE & RUBBER COMPANY OF CANADA, LIMITED (APPLICANT) V. MEMBERS OF LOCAL 232, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA, EMPLOYED AT THE APPLICANT'S FACTORY LOCATED AT 3050 LAKESHORE BLVD. WEST, TORONTO 14, AND THE CENTRAL DISTRIBUTING WAREHOUSE LOCATED ON KIPLING AVENUE, SOUTH, TORONTO 18. (SEE LIST OF INDIVIDUAL RESPONDENTS ATTACHED HERETO) (RESPONDENTS). (WITHDRAWN).

14185-67-U: THE GOODYEAR TIRE & RUBBER COMPANY OF CANADA, LIMITED (APPLICANT) V. LOCAL 232, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA (RESPONDENT). (WITHDRAWN).

15059-68-U: CECCHETO & SONS LTD. (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (WITHDRAWN).

15060-68-U: CECCHETO & SONS LTD. (APPLICANT) V. W. FRAWLEY, J. DUFOUR A. MAURICE, A. TAYLOR, J. NEMETH, E. PATRY, H. GODBOUT AND W. ROBERGE (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING SEPTEMBER

14186-67-U: THE GOODYEAR TIRE & RUBBER COMPANY OF CANADA, LIMITED (APPLICANT) V. LOCAL 232, UNITED RUBBER, CORK, LINOLEUM & PLASTIC WORKERS OF AMERICA (RESPONDENT). (WITHDRAWN).

14491-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 50 (APPLICANT) V. ONORIO & COMPANY LIMITED AND ONORIO IACOBELLI (RESPONDENTS). (WITHDRAWN).

14985-68-U: FRASER-BRACE ENGINEERING COMPANY LIMITED (APPLICANT) V. P. ALBERT ET AL (SEE ATTACHED LIST) (RESPONDENTS). (GRANTED).

15007-68-U: FORESTEEL INDUSTRIES LIMITED (APPLICANT) V. R. ST. GEORGE ET AL (RESPONDENTS). (WITHDRAWN).

15061-68-U: CECCHETO & SONS LTD. (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (WITHDRAWN).

15062-68-U: CECCHETO & SONS LTD. (APPLICANT) V. W. FRAWLEY, J. DUFOUR A. MAURICE, A. TAYLOR, J. NEMETH, E. PARTY, H. GODBOUT AND W. ROBERGE (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

SEPTEMBER

14310-67-U: BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 264 (COMPLAINANT) V. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY LIMITED, BAKERY DIVISION (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 612).

14784-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. ART. ELLIS CONSTRUCTION (ST. CATHARINES) LIMITED (RESPONDENT). (WITHDRAWN).

14785-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. THE R. TIMMS CONSTRUCTION & ENGINEERING LIMITED (RESPONDENT). (WITHDRAWN).

14786-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. C. A. MAUL CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

14787-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. THE FRANK LAWRENCE CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

14788-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. STEWART-HINAN CORPORATION LIMITED (RESPONDENT). (WITHDRAWN).

14789-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. DONALD E. SAUNDERS LIMITED (RESPONDENT). (WITHDRAWN).

14790-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. MCCOLLUM MCGOWAN CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

14791-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. R.D. MCCOLLUM LIMITED (RESPONDENT). (WITHDRAWN).

14792-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. JOHN TRIES CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

14793-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. CAMERON & PHIN LIMITED (RESPONDENT). (WITHDRAWN).

14794-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA (COMPLAINANT) V. JACK W. HARPER CONSTRUCTION LIMITED (RESPONDENT). (WITHDRAWN).

14795-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
(COMPLAINANT) V. NEWMAN BROS. CO. LIMITED (RESPONDENT).
(WITHDRAWN).

14796-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
(COMPLAINANT) V. THE FRID CONSTRUCTION COMPANY LIMITED (RESPONDENT).
(WITHDRAWN).

14797-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
(COMPLAINANT) V. STORK CONSTRUCTION COMPANY LIMITED (RESPONDENT).
(WITHDRAWN).

14798-68-U: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
(COMPLAINANT) V. DOMINION CONSTRUCTION COMPANY (NIAGARA) LIMITED
(RESPONDENT). (WITHDRAWN).

14810-68-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V.
THE BOARD OF EDUCATION FOR THE CITY OF LONDON (RESPONDENT).
(WITHDRAWN).

14859-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL
506 (COMPLAINANT) V. BEER PRECAST CONCRETE LIMITED, PIGOTT CONSTRUCTION
COMPANY LIMITED, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS, LOCALS 721 AND 736 AND ALLAN MACISAAC
(RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 619).

14890-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. SONCO
TUBE LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 626).

14926-68-U: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796
(COMPLAINANT) V. LAURENTIAN UNIVERSITY, SUDBURY (RESPONDENT).
(WITHDRAWN).

14961-68-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A.
& CANADA (COMPLAINANT) V. IMPERIAL OPTICAL CO. LTD. (RESPONDENT).
(WITHDRAWN).

15004-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. ALLANSON
MANUFACTURING CORPORATION LTD. (RESPONDENT). (WITHDRAWN).

15006-68-U: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL,
SOFT DRINK AND DISTILLERY WORKERS OF AMERICA (COMPLAINANT) V. LONDON
BOTTLING COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

15028-68-U: LOCAL UNION No. 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. THIER AND LEDERER, 51-BRUDER AVE., KITCHENER, ONT. (RESPONDENT). (WITHDRAWN).

15063-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. SPACE CONDITIONING OF CANADA LTD. (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

15087-68-M: LAUNDRY, DRY CLEANING AND DYE HOUSE WORKERS' INTERNATIONAL UNION, LOCAL 351 AND VAIL'S FABRIC CARE LTD. (APPLICANTS). (GRANTED).

APPLICATIONS UNDER SECTION 47A DISPOSED OF DURING SEPTEMBER

14561-68-M: CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 157 (APPLICANT) V. THE BOARD OF HEALTH OF THE WELLAND AND DISTRICT HEALTH UNIT, THE BOARD OF HEALTH - THE ST. CATHARINES-LINCOLN HEALTH UNIT, THE BOARD OF HEALTH OF THE NIAGARA DISTRICT HEALTH UNIT (RESPONDENTS) V. GROUP OF EMPLOYEES (OBJECTORS). (DISMISSED).

UNIT: "ALL OFFICE EMPLOYEES AND PUBLIC HEALTH INSPECTORS OF THE BOARD OF HEALTH OF THE NIAGARA DISTRICT HEALTH UNIT SAVE AND EXCEPT CHIEF INSPECTOR, CHIEF CLERK, PERSONS ABOVE THE RANK OF CHIEF INSPECTOR OR CHIEF CLERK, SECRETARY-TREASURER, PUBLIC HEALTH NURSES, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH A UNIVERSITY AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK."

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	33
NUMBER OF PERSONS WHO CAST BALLOTS	32
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	24

14965-68-M: BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 284, FORT WM-PORT ARTHUR (APPLICANT) V. MCGAVIN TOASTMASTER LIMITED, AND SHAW BAKING COMPANY LIMITED (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 631).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

13998-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT). (REQUEST DENIED).

13939-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 638).

14890-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. SONCO TUBE LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 643).

INDEXED ENDORSEMENTS - CERTIFICATION

13757-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SENTRY DEPARTMENT STORES LIMITED (OPERATING UNDER THE NAME G.E.M. STORES (1965)) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: IAN G. SCOTT FOR THE APPLICANT, W. M. TEMPLE, A. J. FOSTER, A. L. JAMIESON AND D. A. FRASER FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: SEPTEMBER 5, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD APPOINTED AN EXAMINER TO REPORT TO THE BOARD, AMONG OTHER THINGS, ON THE EMPLOYMENT STATUS OF PERSONS WORKING IN CERTAIN DEPARTMENTS OF THE RESPONDENT'S STORE AT OTTAWA. THE RESPONDENT CARRIES ON THE OPERATION OF OPERATING A DEPARTMENT STORE AT OTTAWA, THE DEPARTMENTS OF WHICH ARE LEASED TO OTHER COMPANIES. THE RESPONDENT TOOK THE POSITION THAT THE EMPLOYEES IN THE VARIOUS DEPARTMENTS WERE THE EMPLOYEES OF THE CONCESSIONAIRES OF THE VARIOUS DEPARTMENTS WITHIN THE STORE AND WERE NOT THE EMPLOYEES OF THE RESPONDENT.

2. THE RELEVANT PROVISIONS OF THE LEASE BETWEEN THE RESPONDENT AS LESSOR AND THE CONCESSIONAIRES AS LESSEES READ AS FOLLOWS:

2. RESERVING NEVERTHELESS UNTO THE LESSOR, ITS SUCCESSORS AND ASSIGNS (SUBJECT, HOWEVER, TO THE LESSOR'S COVENANTS AND AGREEMENTS HEREINAFTER IN THIS INDENTURE SET FORTH AND CONTAINED) THE RIGHT AND DISCRETION TO FORMULATE, DETERMINE AND ENFORCE SUCH MERCHANDISING POLICIES, STANDARDS AND PRACTICES AS THE LESSOR DEEMS NECESSARY OR ADVISABLE IN THE BEST INTERESTS OF THE OVERALL OPERATION IN THE BUILDING OF A DEPARTMENT STORE (HEREINAFTER SOMETIMES IN THIS INDENTURE REFERRED TO AS STORE) ONE UNIT ONLY OF WHICH (RESTRICTED TO THE RETAIL SALE OF MERCHANDISE OF THE KIND HEREINAFTER

DESCRIBED) IS TO BE CARRIED ON THEREIN BY THE LESSEE: PROVIDED THAT IN THE EXERCISE OF SUCH RIGHT AND DISCRETION THE LESSOR SHALL NOT ENFORCE ANY MERCHANDISING POLICY, STANDARD OR PRACTICE WHICH SHALL BE UNDULY OR UNREASONABLY OPPRESSIVE OR DETRIMENTAL TO THE INTERESTS OF ONE LESSEE IN ORDER TO BENEFIT THE OTHER LESSEES OR THE LESSOR; AND PROVIDED FURTHER THAT NOTHING IN THIS PARAGRAPH SHALL BE CONSTRUED IN SUCH MANNER AS TO ENABLE THE LESSOR TO MAKE ANY MONETARY CHARGES IN CONNECTION WITH THE OPERATION OF THE STORE OR ANY DEPARTMENT THEREOF SAVE AS HEREINAFTER SPECIFICALLY PROVIDED.

11. (e) THAT ALL PERSONS EMPLOYED BY THE LESSEE AND WORKING AT THE LESSEE'S DEPARTMENT IN THE STORE SHALL BE, AND HEREBY ARE, RECOGNIZED AND AGREED TO BE UNDER THE CONTROL OF AND SHALL BE CONSIDERED EMPLOYEES OF THE LESSEE. THE SAID EMPLOYEES SHALL CONFORM TO ALL THE LESSOR'S RULES, REGULATIONS AND REQUIREMENTS IN FORCE IN THE STORE, AS WELL AS ALL REASONABLE RULES AND REGULATIONS WHICH MAY HEREAFTER BE MADE OR PROMULGATED BY THE LESSOR. THE LESSEE FURTHER AGREES THAT LESSEE SHALL BE RESPONSIBLE FOR ALL ACTS OF OMISSION OR COMMISSION BY ITS EMPLOYEES AND AGENTS DURING THE COURSE AND WITHIN THE SCOPE OF EMPLOYMENT, NEGLIGENT OR OTHERWISE. ALL PERSONS EMPLOYED IN THE DEMISED PREMISES SHALL BE SELECTED AND HIRED BY THE LESSEE. THE LESSOR SHALL HAVE THE RIGHT TO REQUIRE THE LESSEE UPON NOTICE TO DISMISS FROM ITS EMPLOYMENT ANY EMPLOYEE UNDER THE MANAGEMENT LEVEL, AND FOR GOOD CAUSE ANY EMPLOYEE IN THE MANAGEMENT LEVEL. THE LESSEE AGREES TO IMMEDIATELY COMPLY WITH SUCH REQUEST OF THE LESSOR IN ALL SUCH CASES. THE LESSEE SHALL FURNISH TO THE LESSOR ALL INFORMATION DESIRED BY THE LESSOR WITH RESPECT TO THE LESSEE'S PAYROLL FOR THE LESSEE'S DEPARTMENT EXCEPT AS TO ANY EMPLOYEE IN THE MANAGEMENT LEVEL, AS AND WHEN REQUIRED BY THE LESSOR FOR THE PURPOSES OF THE STORE'S OPERATIONS. THE LESSEE AGREES TO HAVE AT LEAST ONE OF ITS PRINCIPALS OR MANAGERS, ABOVE THE DEPARTMENT MANAGER PRESENT AND AVAILABLE IN THE STORE FOR CONSULTATION AND INTERVIEW AND DISCUSSIONS WITH THE LESSOR AT REASONABLE INTERVALS WHEN REQUESTED. AND THE LESSEE AGREES THAT THE EMPLOYEES OF THE LESSEE SHALL AT ALL TIMES WORK IN FURTHERANCE OF THE BEST INTEREST OF THE STORE AND THEY SHALL BE INSTRUCTED ACCORDINGLY. AND THE LESSEE AGREES THAT THE LESSOR SHALL HAVE THE RIGHT AND AUTHORITY TO SUPERVISE ALL EMPLOYEES OF THE STORE INCLUDING THE LESSEE'S EMPLOYEES AND TO MAKE ALL SUCH ARRANGEMENTS AS THE LESSOR MAY DEEM NECESSARY FOR HARMONY BETWEEN THE EMPLOYEES OF ALL DEPARTMENTS

IN THE STORE AND FOR THE FULL COOPERATION OF ALL EMPLOYEES IN THE STORE IN FURTHERANCE OF THE OVERALL BUSINESS OF THE STORE; PROVIDED THAT NOTHING HEREINABOVE SET FORTH SHALL AUTHORIZE LESSOR TO SUPERVISE LESSEE'S MANAGEMENT EMPLOYEES SAVE AS MAY BE NECESSARY TO OBTAIN COMPLIANCE WITH THE RULES AND REGULATIONS;

3. THE EVIDENCE ESTABLISHED, HOWEVER, THAT WHEN A PERSON APPLIED FOR EMPLOYMENT AT ANY OF THE DEPARTMENTS WITHIN THE RESPONDENT'S STORE AT OTTAWA, THE APPLICATION FOR EMPLOYMENT FORM WAS IN THE NAME OF G.E.M. STORES. THE EMPLOYEES' IDENTIFICATION PIN AGAIN WAS IN THE NAME OF G.E.M. STORES. NOTICES OF SALARY CHANGE GIVEN TO EMPLOYEES WERE ALSO IN THE NAME OF G.E.M. STORES. UPON BEING EMPLOYED WITHIN ANY OF THE DEPARTMENTS EACH EMPLOYEE WAS GIVEN A DOCUMENT ENTITLED 'G.E.M. STORES PERSONNEL POLICIES' WHICH COVERED SUCH ITEMS AS HOURS OF WORK, OVERTIME, VACATION PAY, PART TIME STAFF, REST PERIODS, STAFF COMMITTEE, HOLIDAYS, SICK PAY, MEDICAL BENEFITS, BEREAVEMENTS, LAY-OFF POLICY, IN STORE TRANSFERS, AND AREAS OF RESPONSIBILITY. THE G.E.M. STORES PERSONNEL POLICIES ALSO SET OUT AREAS OF RESPONSIBILITY UNDER THE SUB-HEADING OF GRADE I - ASSISTANT DEPARTMENT MANAGER; GRADE II - PAYROLL CLERK, CHIEF CASHIER; GRADE III - SALES CLERKS, STOCKMEN, CASHIER, PORTER, SIGN WRITER, WAITRESS, CLERICAL; GRADE IV - CONTINGENTS - PERSONNEL WORKING LESS THAN 60 DAYS ANNUALLY, AND GRADE V - STUDENTS - PERSONNEL ATTENDING SCHOOL AND WORKING WEEKENDS AND AROUND SCHOOL SCHEDULE. FINALLY, THE PERSONNEL POLICIES SET OUT A SCHEDULE OF MINIMUM RATES - HOURLY RATE FOR 24 HOURS OR MORE. THE RATES OF PAY WERE BROKEN DOWN BY CLASSIFICATION AND POSITION, STARTING RATE WITH INCREMENTS AT SIX MONTHS, ONE YEAR AND TWO YEARS.

4. EMPLOYEES WHO ARE HIRED WITHIN THE DEPARTMENTS WERE ALSO PROVIDED WITH A DOCUMENT ENTITLED 'WELCOME TO G.E.M. STORES' AND THIS DOCUMENT READS AS FOLLOWS:

WELCOME TO G.E.M. STORES

A COMPLETE DEPARTMENT STORE FOR GOVERNMENT EMPLOYEES

NOW THAT YOU ARE EMPLOYED ON THE STAFF OF G.E.M. STORES WE OF THE EXECUTIVE STAFF TAKE PLEASURE IN WELCOMING YOU TO OUR FAMILY.

AT G.E.M. STORES, YOU WILL FIND A HAPPY AND CO-OPERATIVE GROUP READY AND ABLE TO HELP YOU IN ANY WAY POSSIBLE IN YOUR JOB.

THE FOLLOWING IS A LIST OF HEAD OFFICE OPERATIONAL EXECUTIVES. YOU ARE INVITED TO INTRODUCE YOURSELF TO THESE PERSONS AND FEEL FREE TO DISCUSS WITH ANY OF THEM ANY PROBLEMS WHICH MAY ARISE.

MANGER, G.E.M. STORE
ASST. MANAGER, G.E.M. STORE

FRONT OFFICE SUPERVISOR

AND YOUR OWN DEPARTMENT MANAGER

G.E.M. STORE IS A COMPLETE DEPARTMENT STORE CONSISTING OF 20 SEPARATE DEPARTMENTS COVERING OVER 130,000 SQUARE FEET OF DISPLAY SPACE, ON ONE FLOOR. YOU WILL FIND ANYTHING (MORE OR LESS) YOU MAY REQUIRE AT ONE OF OUR DEPARTMENTS. WE SUGGEST YOU MAKE FRIENDS OF AS MANY OF OUR 150 EMPLOYEES AS POSSIBLE, PLUS 26 HEAD OFFICE PERSONNEL. YOU WILL FIND EVERYONE EAGER TO BE FRIENDLY AND HELPFUL TO YOU.

MAY WE WISH YOU THE BEST OF SUCCESS WITH US !

5. IN ADDITION, ALL EMPLOYEES WORKING AT THE STORE ARE PROVIDED WITH A DOCUMENT WHICH READS AS FOLLOWS:

G.E.M. STORES

EMPLOYEES' RULES AND REGULATIONS

1. EMPLOYEES' PARKING SHALL BE AS FOLLOWS:

SOUTH END OR BACK OF BUILDING,
NORTH LOT OR NORTH END.

NO EXCEPTIONS WITHOUT WRITTEN PERMISSION
FROM MANAGER OF STORE.

2. MEN WILL WEAR PLAIN LIGHT COLOURED OR WHITE SHIRTS WITH TIES AND WILL BE WELL-GROOMED. WHILE IN THE SELLING AREA, SUIT COATS OR SPORTS JACKETS MUST BE WORN. EXCEPTION TO THIS RULE WILL BE GRANTED BY STORE MANAGER ONLY. WHERE NECESSARY DEPARTMENTS SHOULD SUPPLY SMOCKS FOR DIRTY WORK. STOCK BOYS MUST BE NEAT AND TIDY WITH HAIRCUTS AND SHOE SHINE AND NEAT SLACKS.

3. WOMEN WILL WEAR CONSERVATIVE DRESS, BE WELL-GROOMED AND HAVE THEIR HAIR IN A NEAT AND ATTRACTIVE STYLE.
4. EMPLOYEE IDENTIFICATION BADGES MUST BE WORN AT ALL TIMES DURING WORKING HOURS BY ALL EMPLOYEES, INCLUDING DEPARTMENT MANAGERS. YOUR BADGE MUST BE SHOWN AT THE FRONT DESK TO GAIN ENTRANCE TO THE STORE. YOUR BADGE ADMITS ONLY YOURSELF, DO NOT ATTEMPT TO BRING A FRIEND THROUGH ON YOUR BADGE.
5. SNACK BAR FACILITIES MAY BE USED TO EAT LUNCHES YOU BRING WITH YOU, BUT PLEASE BE NEAT. WHEN FINISHED, DO NOT LEAVE YOUR GARBAGE FOR THE SNACK BAR EMPLOYEES TO CLEAN UP. PUT PAPERS, ETC. IN RECEPTACLES PROVIDED. RETURN CHAIRS TO PROPER TABLES.
6. NO SMOKING, GUM CHEWING, EATING OR DRINKING WILL BE ALLOWED ON THE SELLING FLOOR AT ANY TIME. IF YOU WISH TO LIGHT A CIGARETTE ON THE WAY TO A BREAK OR LUNCH, REMOVE YOUR BADGE OR G.E.M. IDENTIFICATION. NEVER WALK AROUND THE STORE WITH A CIGARETTE WHILE WEARING YOUR G.E.M. BADGE.
7. ALL PERSONAL CALLS SHOULD BE PLACED FROM PUBLIC PAY PHONES.
8. A G.E.M. MEMBERSHIP CARD (OR EMPLOYEE BADGE) MUST BE SHOWN FOR EACH AND EVERY PURCHASE.
9. THE "TYPE OF THE DAY" MUST BE USED ON ALL PACKAGES. CASH REGISTER RECEIPTS OR CHARGE SALES SLIPS MUST BE TAPED ON THE OUTSIDE OF THE PARCEL. TRY TO CLOSE THE PARCEL, IF A BAG, AND SEAL WITH TAPE. IF SOMETHING THAT CANNOT BE WRAPPED, BUT TAPE IN OBVIOUS PLACE TO MAKE IT EASY FOR GUARD TO SEE WHEN MEMBER IS LEAVING THE STORE.
10. ALL EMPLOYEES ARE TO USE THE MAIN ENTRANCE AND EXIT DOORS WHEN STARTING OR FINISHING SHIFT. NO OTHER ENTRANCE OR EXIT WILL BE USED. EMERGENCY EXITS ARE PROVIDED IN ACCORDANCE WITH THE LAW AND ARE TO BE USED IN EMERGENCY. THIS APPLIES TO ALL PERSONNEL AND LICENCEES.

11. EMPLOYEES DO NOT HAVE THE AUTHORITY TO ADMIT NON-MEMBERS INTO THE STORE. FAMILIES CALLING FOR EMPLOYEES MUST WAIT IN THE LOBBY UNTIL THE EMPLOYEE IS FINISHED WORK. FAMILIES AND/OR FRIENDS MAY NOT VISIT WITH EMPLOYEES DURING THE EMPLOYEES' WORKING HOURS.
12. EMPLOYEES' PURCHASES SHALL BE TURNED IN AT THE FRONT OFFICE AND PICKED UP ON THE WAY OUT OF THE STORE AFTER QUITTING TIME. NO PARCELS ARE TO BE TAKEN TO A DEPARTMENT BY ANY EMPLOYEE AND KEPT THERE UNTIL QUITTING TIME.
13. G.E.M. IS A SEMI SELF-SERVE STORE BUT IF A MEMBER ASKS FOR HELP IN LOCATING A SIZE, COLOUR OR MAKING A CHOICE, YOU ARE TO DO EVERYTHING POSSIBLE TO BE OF SERVICE. REMEMBER, UNSATISFIED CUSTOMERS DO NOT RETURN AND WITHOUT THEM, NONE OF US WILL HAVE JOBS.
14. UPON TERMINATION OF EMPLOYMENT AT G.E.M., THE EMPLOYEE IDENTIFICATION BADGE MUST BE TURNED IN BEFORE FINAL PAY IS RECEIVED.

AND LAST BUT NOT LEAST

EVERY G.E.M. MEMBER OR VISITOR TO THE STORE MUST BE TREATED WITH AN ATTITUDE OF RESPECT AND FRIENDLY HELPFULNESS BY ALL EMPLOYEES.

6. ALL CUSTOMERS SHOPPING WITHIN THE STORE MUST FIRST OBTAIN A MEMBERSHIP CARD, THE RELEVANT PORTIONS OF WHICH READ:

G. E. M. STORES
PRIVATE DEPARTMENT STORES
FOR GOVERNMENT EMPLOYEES

CERTIFICATE OF SATISFACTION

EVERY ITEM AT G.E.M. IS
UNCONDITIONALLY GUARANTEED.
IF YOU ARE NOT SATISFIED--FOR
ANY REASON--WITH ANYTHING YOU
BUY AT G.E.M., RETURN IT AND
YOUR MONEY WILL BE REFUNDED
WITHOUT QUESTION. THIS QUARANTEE
IS SECOND TO NONE IN CANADA!

7. THE RESPONDENT PROVIDES A CHEQUE CASHING SERVICE FOR ANY OF ITS CUSTOMERS OR MEMBERS AND THIS SERVICE IS LOCATED IN THE RESPONDENT'S FRONT OFFICE. HOWEVER, ALL PURCHASES ARE PAID FOR WITHIN THE RESPECTIVE DEPARTMENTS. THE STAFF EMPLOYED WITHIN THE DEPARTMENTS DESCRIBED BELOW ARE PAID DIRECTLY BY THE RESPONDENT. THE RESPONDENT DEDUCTS AND REMITS INCOME TAX ON BEHALF OF ALL THE EMPLOYEES PAID BY THE RESPONDENT. PAYMENTS TO THE CANADA PENSION PLAN ARE DEDUCTED BY THE RESPONDENT AND THE RESPONDENT IS NAMED AS EMPLOYER. NONE OF THE CONCESSIONAIRES NAMED IN THE BARGAINING UNIT DESCRIBED BELOW ARE PERMITTED TO EXHIBIT THEIR NAME WITHIN THEIR DEPARTMENTS NOR ARE THEY PERMITTED TO ADVERTISE SHOWING A BRAND NAME OTHER THAN THE RESPONDENT'S NAME.

8. WHEN IT IS FOUND NECESSARY TO ADVERTISE FOR EMPLOYEES THE ADVERTISEMENT IS IN THE NAME OF THE RESPONDENT AND ALTHOUGH THE DEPARTMENT MAY BE IDENTIFIED WITH WORDS SUCH AS SHOE DEPARTMENT OR MILLINERY DEPARTMENT, THE NAME OF THE CONCESSIONAIRE IS AT NO TIME USED IN THE ADVERTISEMENT. WHEN A PROSPECTIVE EMPLOYEE IS INTRODUCED TO THE MANAGER OF ONE OF THE CONCESSIONS HE IS INTRODUCED TO MR. SO-AND-SO, "OUR SHOE DEPARTMENT MANAGER".

9. WHILE IT APPEARS THAT AS BETWEEN THE RESPONDENT AND THE CONCESSIONAIRES THERE IS A PRIVATE ARRANGEMENT BETWEEN THEM THAT ALL THE EMPLOYEES WORKING IN THE VARIOUS DEPARTMENTS ARE TO BE CONSIDERED THE EMPLOYEES OF THE CONCESSIONAIRES RATHER THAN THE EMPLOYEES OF THE RESPONDENT, THIS PRIVATE ARRANGEMENT IS NOT DISCLOSED TO THE EMPLOYEES. ON THE OTHER HAND, THE EVIDENCE CLEARLY ESTABLISHED THAT THE RESPONDENT HAS TAKEN GREAT PAINS TO CONCEAL THE TRUE IDENTITY OF THE CONCESSIONAIRES AND HAS ENDEAVOURED TO CREATE THE IMPRESSION AMONG THE PUBLIC AND EMPLOYEES ALIKE THAT THE RESPONDENT IS THE SOLE OPERATOR OF ALL DEPARTMENTS WITHIN THE STORE AND IS THE EMPLOYER OF THE EMPLOYEES WITHIN THE DEPARTMENTS DESCRIBED BELOW.

10. THE RESPONDENT ARGUED THAT THE BOARD SHOULD APPLY THE FOURFOLD TEST ENUNCIATED BY THE BOARD IN THE CANADA BREAD CASE, 62 C.L.L.C. 994, C.L.S. 76-807, AND CHUKUNI LUMBER CASE, 64 C.L.L.C. 1239, C.L.S. 76-986. IT WAS ARGUED THAT IF THE BOARD APPLIED THE FOURFOLD TEST OF (A) CONTROL, (B) OWNERSHIP OF TOOLS, (C) CHANCE OF PROFIT, AND (D) RISK OF LOSS, IT IS APPARENT THAT THE CONCESSIONAIRES ARE THE TRUE EMPLOYERS OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED.

11. THE FOURFOLD TEST REFERRED TO BY THE RESPONDENT IS APPLIED WHERE THERE IS AN ISSUE BETWEEN THE PARTIES AS TO WHETHER OR NOT A PERSON IS AN INDEPENDENT CONTRACTOR OR MERELY AN EMPLOYEE OF A COMPANY. IN THIS CASE, THERE IS NO ISSUE BETWEEN THE PARTIES WITH RESPECT TO THE FACT THAT ALL OF THE CONCESSIONAIRES ARE SEPARATE LEGAL ENTITIES AND ARE THEREFORE INDEPENDENT CONTRACTORS. WHAT THE BOARD MUST DETERMINE IN THIS CASE IS NOT WHETHER THE EMPLOYEES WITHIN THE CONCESSIONS ARE INDEPENDENT CONTRACTORS BUT WHETHER THEY ARE EMPLOYED

BY THE RESPONDENT OR BY THE CONCESSIONAIRES. IT WAS NOT ARGUED THAT THE EMPLOYEES EMPLOYED WITHIN THE VARIOUS DEPARTMENTS WERE INDEPENDENT CONTRACTORS. THE ONLY ISSUE WITH WHICH WE MUST DEAL IS WHETHER THE EMPLOYEES WITHIN THE DEPARTMENTS WITH WHICH WE ARE HERE CONCERNED ARE EMPLOYED BY THE RESPONDENT RATHER THAN BY THE RESPONDENT LESSEES. AS STATED ABOVE, IT IS CLEAR FROM THE TERMS OF THE LEASE ENTERED INTO BETWEEN THE RESPONDENT AND THE CONCESSIONAIRES THAT AS BETWEEN THEM THE LESSEES ARE THE PERSONS TO BE CONSIDERED THE EMPLOYER AND ANY EXPENSES INCURRED WITH RESPECT TO SUCH EMPLOYEES ARE CHARGED BACK BY THE RESPONDENT TO THE LESSEES. HOWEVER, IT IS EQUALLY CLEAR THAT AS BETWEEN THE PARTIES TO THE LEASE THE RESPONDENT HAS RETAINED A LARGE MEASURE OF CONTROL OVER SUCH EMPLOYEES AND HAS, IN FACT, RETAINED CONTROL NOT ONLY OVER MERCHANDISING POLICIES, BUT IS IN THE POSITION TO DETERMINE WHO THE CUSTOMERS OF THE CONCESSIONAIRES WILL BE.

12. WHATEVER THE PRIVATE ARRANGEMENTS BETWEEN THE PARTIES TO THE LEASE MAY BE, IT IS ABUNDANTLY CLEAR ON THE EVIDENCE THAT AT THE TIME OF HIRING AND DURING THE COURSE OF EMPLOYMENT THE RESPONDENT IS IDENTIFIED AS THE EMPLOYER OF EMPLOYEES WITH WHOM WE ARE HERE CONCERNED. THE RESPONDENT NOT ONLY DETERMINES THE RULES AND REGULATIONS GOVERNING THE EMPLOYEES BUT IN ADDITION HOLDS ITSELF OUT TO THE EMPLOYEES AS THE EMPLOYER AT THE TIME THE EMPLOYEES' WAGES ARE PAID. THE EMPLOYMENT RELATIONSHIP BETWEEN AN EMPLOYER AND EMPLOYEE IS A CONTRACTUAL RELATIONSHIP AND THE EMPLOYEE PARTY TO THE CONTRACT SHOULD AT ALL TIMES BE ABLE TO IDENTIFY THE EMPLOYER WITH WHOM THE CONTRACT IS MADE. WHILE IT ADMITTED THAT AT TIMES ONE OR MORE PERSONS MAY ACTIVELY PARTICIPATE IN THE NORMAL EMPLOYMENT RELATIONSHIP AN EMPLOYEE SHOULD BE ENTITLED TO DETERMINE THE IDENTITY OF HIS EMPLOYER WHEN ALL THE FACTS AVAILABLE TO HIM ARE ASSESSED. IN THE INSTANT CASE, NONE OF THE FACTS AVAILABLE TO THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED POINT TO ANY PERSON OTHER THAN THE RESPONDENT AS THE EMPLOYEES' EMPLOYER. EVEN THE DEPARTMENT MANAGER IS IDENTIFIED BY THE RESPONDENT AS "OUR SHOE DEPARTMENT MANAGER". IN THIS WAY, THE EMPLOYEES ARE LED TO BELIEVE THAT THE DEPARTMENT MANAGER IS A MEMBER OF THE RESPONDENT'S MANAGEMENT TEAM.

13. IN THE CIRCUMSTANCES SET OUT ABOVE, THE BOARD MUST FIND THAT THE RESPONDENT HAVING HELD ITSELF OUT AS THE ONLY PERSON WITH WHOM THE EMPLOYEES ENJOY AN EMPLOYMENT RELATIONSHIP CANNOT NOW DENY SUCH RELATIONSHIP. WHILE THE CONCESSIONAIRES MAY BE CONSIDERED TO BE THE EMPLOYER OF THE EMPLOYEES FOR ACCOUNTING PURPOSES AND SINCE THIS FACT WAS NEVER DISCLOSED TO THE EMPLOYEES AT THE TIME THEY WERE HIRED, BECAUSE THE RESPONDENT HAS RETAINED CONTROL OVER THOSE MATTERS WHICH ARE THE NORMAL SUBJECT OF COLLECTIVE BARGAINING, THE BOARD FINDS THAT THE RESPONDENT IS THE EMPLOYER OF THE EMPLOYEES IN THE BARGAINING UNIT DESCRIBED BELOW FOR THE PURPOSES OF THE LABOUR RELATIONS ACT.

14. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES EMPLOYED BY THE RESPONDENT AT ITS STORE AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, MERCHANDISING DEPARTMENT MANAGERS, DEPARTMENT MANAGERS, FRONT OFFICE SUPERVISOR AND PERSONS ABOVE THOSE RANKS, OFFICE STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #1.

15. FOR THE PURPOSE OF CLARITY, SINCE THE EMPLOYEES EMPLOYED IN THE FURNITURE, APPLIANCES, CANADIAN TIRE, BEAUTY SALON, CLEANERS AND BARBER SHOP CONCESSIONS ARE PAID DIRECTLY BY THEIR CONCESSIONAIRE, AND SINCE THERE IS NO DISPUTE BETWEEN THE PARTIES CONCERNING THE IDENTITY OF THE EMPLOYER OF SUCH EMPLOYEES, THE BOARD DECLARES THAT THEY ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #1.

16. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 31ST, 1968, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FURTHER FINDS THAT J. LANCTOT DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #1, AND THAT E. KELLY IS A FRONT OFFICE SUPERVISOR AND EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN ANY BARGAINING UNIT.

17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 25TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1. ALL EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1 ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

19. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

20. THE MATTER IS REFERRED TO THE REGISTRAR.

21. HAVING REGARD TO ALL THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AT ITS STORE AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, MERCHANDISING DEPARTMENT MANAGERS, DEPARTMENT MANAGERS, FRONT OFFICE SUPERVISOR, AND PERSONS ABOVE THOSE RANKS, OFFICE STAFF, SECURITY GUARDS AND PERSONS COVERED BY BARGAINING UNIT #1, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #2.

22. FOR THE PURPOSE OF CLARITY, SINCE THE EMPLOYEES EMPLOYED IN THE FURNITURE, APPLIANCES, CANADIAN TIRE, BEAUTY SALON, CLEANERS AND BARBER SHOP CONCESSIONS ARE PAID DIRECTLY BY THEIR CONCESSION-AIRE, AND SINCE THERE IS NO DISPUTE BETWEEN THE PARTIES CONCERNING THE IDENTITY OF THE EMPLOYER OF SUCH EMPLOYEES, THE BOARD DECLARES THAT THEY ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #2.

23. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 25TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

24. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO THE EMPLOYEES IN BARGAINING UNIT #2.

25. AFTER THE HEARING IN THIS MATTER THE RESPONDENT, BY LETTER DATED AUGUST 29TH, 1968, STATED IN PART AS FOLLOWS:

AT THE HEARING OF THESE MATTERS BEFORE THE BOARD ON AUGUST 7, 1968, THE BOARD DIRECTED CERTAIN QUESTIONS TO THE WRITER RELATING TO THE EXISTENCE OF ANY EVIDENCE IN THE MATERIAL BEFORE THE BOARD FROM WHICH IT COULD BE ARGUED THE EMPLOYEES AT THE STORE COULD CONCLUDE THAT THEIR EMPLOYER IS NOT THE RESPONDENT. WE HAVE GIVEN FURTHER THOUGHT TO THIS ASPECT OF THE EVIDENCE AND WE HAVE CONCLUDED, WITH RESPECT, THAT IF THE BOARD IS CONCERNED ABOUT WHO THE EMPLOYEES CONSIDER THEIR EMPLOYER TO BE, THE EXAMINER SHOULD BE AUTHORIZED TO INTERVIEW THE EMPLOYEES WITH A VIEW TO DETERMINING WHETHER THEY HAVE OPINIONS AS TO WHO THEIR EMPLOYER IS AND HOW

LONG THEY HAVE HELD ANY SUCH OPINIONS. WE ARE ALSO RESPECTFULLY OF THE VIEW THAT IT MAY BE OF SOME ASSISTANCE TO THE BOARD IF THE CONCESSIONAIRES WHOM THE RESPONDENT CLAIMS TO BE THE EMPLOYERS OF THE EMPLOYEES WERE ADDED AS PARTIES TO THE PROCEEDINGS AND GIVEN AN OPPORTUNITY TO MAKE REPRESENTATIONS.

WE WOULD RESPECTFULLY APPRECIATE YOU PLACING THESE VIEWS BEFORE THE BOARD FOR ITS CONSIDERATION AND IF NECESSARY, WE WOULD ASK THAT THIS LETTER BE CONSIDERED AS A FORMAL REQUEST THAT THE EXAMINER BE SO AUTHORIZED AND THAT THE CONCESSIONAIRES BE ADDED AS PARTIES.

SINCE THE PARTIES HAD FULL OPPORTUNITY TO CALL EVIDENCE AND MAKE REPRESENTATIONS AT THE HEARING IN THIS MATTER COVERING ALL MATTERS IN DISPUTE AND SINCE THE MATTERS RAISED BY THE RESPONDENT COULD HAVE BEEN DEALT WITH AT THAT TIME, THE BOARD IS OF OPINION THAT NO FURTHER OPPORTUNITY SHOULD BE GIVEN TO THE RESPONDENT TO ADD TO THE EVIDENCE NOW BEFORE THE BOARD. THE RESPONDENT'S REQUEST AS CONTAINED IN ITS LETTER OF AUGUST 29TH, 1968 IS THEREFORE DENIED.

14099-67-R: FUR & LEATHER WORKERS' UNION, LOCAL 82, AFFILIATED WITH THE AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO (APPLICANT) V. J. D. CARRIER SHOE CO. LTD. (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE:

DECISION OF THE BOARD: SEPTEMBER 4, 1968.

1. FOLLOWING THE DIRECTION OF THE PRE-HEARING REPRESENTATION VOTE BY THE BOARD'S DECISION OF FEBRUARY 16TH, 1968, THE APPLICANT REQUESTED LEAVE TO WITHDRAW ITS APPLICATION IN THIS MATTER.
2. HAVING REGARD TO THE TIME AT WHICH THE APPLICANT'S REQUEST WAS MADE AND FOR THE REASONS GIVEN BY THE BOARD IN THE MATHIAS QUELLETTE CASE (1955) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER ¶16,026, C.L.S. 76-485, THE APPLICANT'S REQUEST FOR WITHDRAWAL IS DENIED AND THE APPLICATION IS ACCORDINGLY DISMISSED.
3. IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD IS NOT PREPARED TO IMPOSE A SIX MONTHS BAR ON THE APPLICATION. HOWEVER, SHOULD THERE BE ANOTHER APPLICATION FOR CERTIFICATION COVERING THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN THE BOARD'S DECISION OF FEBRUARY 16TH, 1968, THE BOARD AT THAT TIME WILL ENTERTAIN ANY REPRESENTATIONS THE PARTIES MAY WISH TO MAKE WITH RESPECT TO THE TIMELINESS OF SUCH SUBSEQUENT APPLICATION.

14244-67-R: INTERNATIONAL CHEMICAL WORKERS' UNION (APPLICANT) V.
ALMA PAINT & VARNISH COMPANY LIMITED (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN
AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: TED WOHL FOR THE APPLICANT, D.
CHURCHILL-SMITH, MARSHALL HARMON, HOWARD MUNROE FOR THE RESPONDENT
AND H. S. TAGGART, Q.C., FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN:

SEPTEMBER 30, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE BOARD
DIRECTED THAT A REPRESENTATION VOTE BE TAKEN.

2. THE BARGAINING UNIT DETERMINED BY THE BOARD IN ITS DECISION
OF MARCH 20TH, 1968, READS AS FOLLOWS:

HAVING REGARD TO THE AGREEMENT OF THE PARTIES,
THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE
RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN,
PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND
SALES STAFF, RETAIL STORE EMPLOYEES, EMPLOYEES
IN THE RESEARCH LABORATORY DEPARTMENT, AND
STUDENTS EMPLOYED DURING THE SCHOOL VACATION
PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE
RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES
THAT THE RESEARCH LABORATORY DEPARTMENT IS COMPRISED
OF EMPLOYEES CLASSIFIED AS CHEMISTS, LABORATORY
TRAINEES, AND LABORATORY TECHNICIANS AND ASSISTANTS.

3. ON THE TAKING OF THE REPRESENTATION VOTE, THE NAME OF
JOHN E. WILSON WAS REMOVED FROM THE REVISED VOTERS' LIST WITH THE
AGREEMENT OF THE APPLICANT AND THE RESPONDENT, AND THE RESPONDENT
ALSO CHALLENGED THE INCLUSION OF J. ROTH, G. PALMER AND E. VAN
WYNGAARDEN.

4. THE PARTIES AGREED THAT JOHN E. WILSON WAS A TRUCK DRIVER
EMPLOYED BY THE RESPONDENT AND WAS INCLUDED IN THE BARGAINING UNIT.
ON THE DATE THE VOTE WAS TAKEN, WILSON LEFT THE RESPONDENT'S PLANT
TO MAKE DELIVERIES OUTSIDE OF METROPOLITAN TORONTO, PRIOR TO THE
TIME THE POLL OPENED. AFTER MAKING HIS DELIVERIES, WILSON RETURNED
TO THE PLANT AT ABOUT 8:00 P.M., HOWEVER, THE POLL HAD CLOSED BY
THAT TIME. SINCE WILSON WAS ABSENT FROM THE RESPONDENT'S PLANT
DURING THE PERIOD THAT THE POLL WAS OPEN, THE APPLICANT AND THE
RESPONDENT AGREED TO REMOVE HIS NAME FROM THE REVISED VOTERS' LIST.
HOWEVER, THE OBJECTORS WERE NOT A PARTY TO THIS AGREEMENT.

5. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE, THE RESPONDENT REPUDIATED ITS AGREEMENT TO REMOVE WILSON'S NAME FROM THE REVISED VOTERS' LIST AND WILSON ALSO WROTE TO THE BOARD AND OBJECTED TO THE REMOVAL OF HIS NAME.

6. THE RESPONDENT ALSO TOOK THE POSITION THAT J. ROTH, G. PALMER, AND E. VAN WYNGAARDEN SHOULD NOT BE INCLUDED ON THE VOTERS' LIST SINCE THEY WERE EXCLUDED FROM THE BARGAINING UNIT UNDER THE EXCLUDED CLASSIFICATION OF "EMPLOYEES IN THE RESEARCH LABORATORY DEPARTMENT".

7. THE BOARD APPOINTED AN EXAMINER TO INQUIRE INTO THE DISPUTE BETWEEN THE PARTIES.

8. AT THE HEARINGS IN THIS MATTER, WILSON WAS REPRESENTED BY THE SOLICITOR FOR THE OBJECTORS.

9. IT IS APPARENT FROM THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT THAT WILSON WAS AT WORK ON THE DATE THE VOTE WAS TAKEN AND WAS ELIGIBLE TO VOTE. IN THESE CIRCUMSTANCES THE APPLICANT AND THE RESPONDENT IMPROPERLY REMOVED WILSON'S NAME FROM THE VOTERS' LIST AND WERE ACCORDINGLY WITHOUT AUTHORITY TO DISENFRANCHISE WILSON BY REMOVING HIS NAME FROM THE VOTERS' LIST. WE THEREFORE DIRECT THAT THE NAME OF JOHN E. WILSON BE REPLACED ON THE REVISED VOTERS' LIST IN THIS MATTER.

10. AN EMPLOYEE WHO IS OPPOSED TO A UNION CAN REGISTER HIS OPPOSITION TO THE UNION ON A REPRESENTATION VOTE BY REFRAINING FROM VOTING. WHILE THE ACT OF STAYING AWAY FROM THE POLL DESTROYS THE SECRECY OF SUCH AN EMPLOYEE'S VOTE, THE FACT REMAINS THAT BY NOT CASTING A BALLOT HE IN FACT HAS VOTED AGAINST THE UNION SINCE THE UNION MUST OBTAIN A MAJORITY OF ALL THOSE ELIGIBLE TO VOTE RATHER THAN A MAJORITY OF BALLOTS CAST.

11. IF WILSON HAD BEEN A PERSON OTHER THAN AN OBJECTOR AND HAD ATTENDED THE HEARING IN THIS MATTER AND REQUESTED THE OPPORTUNITY TO CAST A BALLOT, THE BOARD WOULD BE FACED WITH THE DECISION OF DIRECTING A NEW REPRESENTATION VOTE SINCE HIS BALLOT MIGHT, OF ITSELF, DETERMINE THE OUTCOME OF THE REPRESENTATION VOTE. HOWEVER, SINCE WILSON WAS ONE OF THE OBJECTORS AND DID NOT ATTEND THE HEARING AND REQUEST THE OPPORTUNITY TO CAST A BALLOT, SUCH PROCEDURE IS NOT NECESSARY IN VIEW OF THE FACT THAT BY STAYING AWAY FROM THE POLL HE HAS IDENTIFIED HIMSELF AS BEING IN OPPOSITION TO THE UNION.

12. DEALING NEXT WITH THE INCLUSION OF J. ROTH, G. PALMER AND E. VAN WYNGAARDEN, WHILE IT IS THE BOARD'S USUAL PRACTICE TO INCLUDE QUALITY CONTROL EMPLOYEES IN A PRODUCTION BARGAINING UNIT, HOWEVER THE FACTS OF A PARTICULAR CASE MAY BE SUCH AS TO CAUSE THE BOARD TO FIND THAT THE COMMUNITY OF INTEREST OF SUCH QUALITY CONTROL EMPLOYEES IS SHARED WITH A GROUP OTHER THAN THE PRODUCTION EMPLOYEES.

13. IN THE INSTANT CASE THE RESPONDENT CARRIES ON BUSINESS AS A PAINT MANUFACTURER. THE RESPONDENT HAS BOTH A RESEARCH LABORATORY AND QUALITY CONTROL LABORATORIES. THE EMPLOYEES IN THE QUALITY CONTROL LABORATORIES IN THIS CASE HAVE LITTLE COMMUNITY OF INTEREST WITH THE PLANT EMPLOYEES, WHEREAS THEY SHARE VIRTUALLY THE SAME COMMUNITY OF INTEREST WITH THE RESEARCH LABORATORY EMPLOYEES.

14. THIS COMMUNITY OF INTEREST COVERS SUCH MATTERS AS

- (A) THE RESPONDENT'S ORGANIZATION AND ADMINISTRATION;
- (B) INTERMINGLING AND INTERCHANGE;
- (C) GEOGRAPHIC LOCATION OF WORK;
- (D) KIND OF SKILLS, RESPONSIBILITIES AND INTERCHANGE-ABILITY;
- (E) NATURE AND PLACE OF WORK;
- (F) CONDITIONS OF EMPLOYMENT.

15. THE RESPONDENT'S TECHNICAL DIRECTOR IS RESPONSIBLE FOR BOTH RESEARCH AND QUALITY CONTROL LABORATORIES. THE PLANT EMPLOYEES REPORT THROUGH THE PLANT MANAGER. THE LABORATORY PERSONNEL HAVE NOTHING TO DO WITH THE PLANT ORGANIZATION.

16. THERE IS NO INTERMINGLING BETWEEN THE PLANT EMPLOYEES AND QUALITY CONTROL LABORATORY EMPLOYEES, WHEREAS THE QUALITY CONTROL AND RESEARCH LABORATORY EMPLOYEES HAVE TRANSFERRED FROM ONE LAB TO THE OTHER.

17. THE RESEARCH AND QUALITY CONTROL LABORATORY EMPLOYEES ARE GEOGRAPHICALLY SEPARATE FROM THE PLANT EMPLOYEES. THE QUALITY CONTROL LABORATORY EMPLOYEES WORK IN CONJUNCTION WITH AND RECEIVE DIRECTION FROM THE RESEARCH LABORATORY PERSONNEL.

18. THE QUALITY CONTROL LABORATORY EMPLOYEES PERFORM DIFFERENT WORK THAN THAT PERFORMED BY THE PLANT EMPLOYEES AND ALSO USE DIFFERENT EQUIPMENT.

19. THE CONDITIONS OF EMPLOYMENT OF THE RESEARCH LABORATORY AND QUALITY CONTROL LABORATORY EMPLOYEES ARE SIMILAR WHEREAS THE PLANT EMPLOYEES HAVE DIFFERENT CONDITIONS OF EMPLOYMENT IN SUCH AREAS AS HOURS OF WORK AND OVERTIME, THE PUNCHING OF TIME CLOCKS, METHOD OF PAYMENT, TYPE OF CLOTHING WORN ON THE JOB, PAYMENT FOR TIME OFF AND VACATIONS.

20. HAVING REGARD TO THE FACTORS ENUNCIATED ABOVE, IT IS READILY APPARENT THAT THE QUALITY CONTROL LABORATORY EMPLOYEES SHARE THE COMMUNITY OF INTEREST WITH THE RESEARCH LABORATORY EMPLOYEES RATHER THAN THE PLANT EMPLOYEES AND ARE THEREFORE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT DESCRIBED ABOVE AND ARE PROPERLY PART OF THE RESPONDENT'S RESEARCH LABORATORY DEPARTMENT.

21. THE BOARD ACCORDINGLY FINDS THAT J. ROTH AND E. VAN WYNGAARDEN ARE PERSONS EMPLOYED BY THE RESPONDENT IN ITS RESEARCH LABORATORY DEPARTMENT AND ARE NOT INCLUDED IN THE BARGAINING UNIT AND THEREFORE ARE NOT ELIGIBLE TO VOTE. THE BOARD FURTHER DETERMINES THAT THE SEGREGATED BALLOTS CAST BY J. ROTH AND E. VAN WYNGAARDEN SHALL NOT BE COUNTED.

22. SINCE THE REVISED VOTERS' LIST HAS BEEN CORRECTED TO INCLUDE THE NAME OF JOHN E. WILSON, THE NUMBER OF NAMES OF PERSONS ON THE REVISED VOTERS' LIST IN THIS MATTER IS 98 OF WHOM 48 MARKED THEIR BALLOTS IN FAVOUR OF THE APPLICANT.

23. THE BOARD THEREFORE FINDS ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

24. THE APPLICATION IS THEREFORE DISMISSED.

25. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.

26. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHALL NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

DECISION OF BOARD MEMBER P. J. O'KEEFE: SEPTEMBER 30, 1968.

I DISSENT FROM THE MAJORITY DECISION AS IT RELATES TO JOHN E. WILSON. IN THE REPORT OF THE EXAMINER THE PARTIES AGREED TO THE FOLLOWING STATEMENT OF FACT:

THE PARTIES AGREE THAT MR. WILSON WAS A TRUCK DRIVER IN THE EMPLOY OF THE COMPANY IN THE BARGAINING UNIT AS OF MARCH 20TH, 1968, AND INCLUDING APRIL 9TH, 1968. HE LEFT THE PLANT BETWEEN 5:00 A.M. AND 5:30 A.M. ON APRIL 9TH, 1968, TO MAKE DELIVERIES TO VARIOUS STOPS

INCLUDING COLLINGWOOD, AND UPON COMPLETION OF HIS RUN HE RETURNED TO THE PLANT AT APPROXIMATELY 8:00 P.M. MR. WILSON WAS PERFORMING HIS REGULAR DUTIES AS A STAKE TRUCK DRIVER ON APRIL 9TH, 1968, CONSISTENT WITH HIS SCHEDULED DUTIES. MR. WILSON WAS PLANNING TO VOTE AT 6:00 A.M., BUT BECAUSE OF CUSTOMER REQUIREMENTS HE LEFT AT HIS USUAL STARTING TIME FOR THIS KIND OF RUN AT APPROXIMATELY 5:15 A.M.

THE EVIDENCE IN THIS MATTER IS THAT MR. WILSON WHO IS A TRUCK DRIVER LEFT THE RESPONDENT'S PREMISES BEFORE THE OPENING OF THE POLLING BOOTH IN THE MORNING AND DID NOT RETURN UNTIL 8:00 P.M. THAT DAY WHICH WAS APPROXIMATELY FOUR HOURS AFTER THE POLLING BOOTH CLOSED.

IN ACCORDANCE WITH THE EVIDENCE IN THIS CASE I WOULD HAVE FOUND THAT MR. WILSON WAS DEPRIVED OF AN OPPORTUNITY TO VOTE IN THIS MATTER AND I WOULD HAVE ORDERED A NEW VOTE.

14345-67-R: THE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) V. THE GENERAL HOSPITAL OF PORT ARTHUR (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: B. B. TREMBLEY FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENT, M. LEVINSON, A. G. HEARN AND H. SHARPE FOR THE INTERVENER.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, FOR THE MAJORITY, AND DISSENTING DECISIONS OF BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE; SEPTEMBER 26, 1968.

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3. FOR THE REASONS GIVEN IN THE DECISION OF THE MAJORITY IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE, BOARD FILE NO. 14347-67-R, THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT ENTERED INTO BY THE RESPONDENT AND THE INTERVENER DATED FEBRUARY 13TH, 1968 IS VOID AS IT RELATES TO THE REGISTERED NURSING ASSISTANTS IN THE EMPLOY OF THE RESPONDENT FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. THE ABOVE COLLECTIVE AGREEMENT THEREFORE IS NOT A BAR TO THE INSTANT APPLICATION.

4. FOR THE REASONS GIVEN IN THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 62 AND ESSEX HEALTH ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1967, P. 716, THE BOARD FINDS THAT THE REGISTERED NURSING ASSISTANTS BY THEMSELVES DO NOT CONSTITUTE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

5. FOR THE REASONS GIVEN IN THE DECISION OF THE MAJORITY IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE (SUPRA), THE BOARD FURTHER FINDS THAT THERE IS NO APPROPRIATE UNIT AT THE RESPONDENT HOSPITAL WHICH THE APPLICANT COULD REPRESENT.

6. THE APPLICATION ACCORDINGLY IS DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN:

SEPTEMBER 26, 1968.

1. I CONCUR IN THE MAJORITY DECISION THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. FOR THE REASONS GIVEN IN THE MAJORITY DECISION IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE, BOARD FILE NO. 14347-67-R, I ALSO CONCUR THAT THE REGISTERED NURSING ASSISTANTS IN THE EMPLOY OF THE RESPONDENT ARE NOT BOUND BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED FEBRUARY 13TH, 1968, AND THAT THE APPLICATION THEREFORE IS TIMELY.

2. I DISSENT FROM THAT PART OF THE MAJORITY DECISION IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE (SUPRA) WHICH FINDS THAT A BARGAINING UNIT COMPOSED SOLELY OF REGISTERED NURSING ASSISTANTS IS INAPPROPRIATE FOR COLLECTIVE BARGAINING. FOR THE REASONS GIVEN IN MY DECISION IN THE ABOVE CASE, I WOULD HAVE FOUND THAT A BARGAINING UNIT COMPOSED SOLELY OF REGISTERED NURSING ASSISTANTS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING AND WOULD HAVE CERTIFIED THE APPLICANT AS THEIR BARGAINING AGENT.

DECISION OF BOARD MEMBER P. J. O'KEEFFE:

SEPTEMBER 26, 1968.

1. I CONCUR IN THE DECISION OF THE MAJORITY IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE, BOARD FILE NO. 14347-67-R, THAT THE REGISTERED NURSING ASSISTANTS BY THEMSELVES DO NOT CONSTITUTE AN APPROPRIATE BARGAINING UNIT AND THAT THERE IS NO APPROPRIATE UNIT WHICH THE APPLICANT COULD REPRESENT. I THEREFORE WOULD DISMISS THE APPLICATION.

2. FOR THE REASONS GIVEN IN MY DECISION IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE (SUPRA), I DISSENT FROM THE VIEWS EXPRESSED BY THE MAJORITY IN PARAGRAPHS 16, 17, 18 AND 19 OF THE MAJORITY DECISION IN THE ABOVE CASE.

14346-67-R: THE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) v. MCKELLAR GENERAL HOSPITAL (RESPONDENT) BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER #1) v. OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL 81 (INTERVENER #2).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: B. B. TREMBLEY FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENT, M. LEVINSON, A. G. HEARN AND H. SHARPE FOR INTERVENER #1, D. BARCLAY FOR INTERVENER #2.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, FOR THE MAJORITY, AND DISSENTING DECISIONS OF BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE: SEPTEMBER 26, 1968.

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2. FOR THE REASONS GIVEN IN THE DECISION OF THE MAJORITY IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE, BOARD FILE NO. 14347-67-R, THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT ENTERED INTO BY THE RESPONDENT AND THE INTERVENER DATED FEBRUARY 13TH, 1968 IS VOID AS IT RELATES TO THE REGISTERED NURSING ASSISTANTS IN THE EMPLOY OF THE RESPONDENT FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION. THE ABOVE COLLECTIVE AGREEMENT THEREFORE IS NOT A BAR TO THE INSTANT APPLICATION.

3. FOR THE REASONS GIVEN IN THE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 62 AND ESSEX HEALTH ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1967, P. 716, THE BOARD FINDS THAT THE REGISTERED NURSING ASSISTANTS BY THEMSELVES DO NOT CONSTITUTE AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.

4. FOR THE REASONS GIVEN IN THE DECISION OF THE MAJORITY IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE (SUPRA), THE BOARD FURTHER FINDS THAT THERE IS NO APPROPRIATE UNIT AT THE RESPONDENT HOSPITAL WHICH THE APPLICANT COULD REPRESENT.

5. THE APPLICATION ACCORDINGLY IS DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN: SEPTEMBER 26, 1968.

1. I CONCUR IN THE MAJORITY DECISION THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. FOR THE REASONS GIVEN IN THE MAJORITY DECISION IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE, BOARD FILE NO. 14347-67-R, I ALSO CONCUR THAT THE REGISTERED NURSING ASSISTANTS IN THE EMPLOY OF THE RESPONDENT ARE NOT BOUND BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER DATED FEBRUARY 13TH, 1968, AND THAT THE APPLICATION THEREFORE IS TIMELY.

2. I DISSENT FROM THAT PART OF THE MAJORITY DECISION IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE (SUPRA) WHICH FINDS THAT A BARGAINING UNIT COMPOSED SOLELY OF REGISTERED NURSING ASSISTANTS IS INAPPROPRIATE FOR COLLECTIVE BARGAINING. FOR THE REASONS GIVEN IN MY DECISION IN THE ABOVE CASE, I WOULD HAVE FOUND THAT A BARGAINING UNIT COMPOSED SOLELY OF REGISTERED NURSING ASSISTANTS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING AND WOULD HAVE CERTIFIED THE APPLICANT AS THEIR BARGAINING AGENT.

DECISION OF BOARD MEMBER P. J. O'KEEFFE:

SEPTEMBER 26, 1968.

1. I CONCUR IN THE DECISION OF THE MAJORITY IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE, BOARD FILE NO. 14347-67-R, THAT THE REGISTERED NURSING ASSISTANTS BY THEMSELVES DO NOT CONSTITUTE AN APPROPRIATE BARGAINING UNIT AND THAT THERE IS NO APPROPRIATE UNIT WHICH THE APPLICANT COULD REPRESENT. I THEREFORE WOULD DISMISS THE APPLICATION.

2. FOR THE REASONS GIVEN IN MY DECISION IN THE ST. JOSEPH'S GENERAL HOSPITAL CASE (SUPRA), I DISSENT FROM THE VIEWS EXPRESSED BY THE MAJORITY IN PARAGRAPHS 16, 17, 18 AND 19 OF THE MAJORITY DECISION IN THE ABOVE CASE.

14347-67-R: THE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) V. ST. JOSEPH'S GENERAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: B. B. TREMBLEY FOR THE APPLICANT, R. D. PERKINS FOR THE RESPONDENT, M. LEVINSON, A. G. HEARN AND H. SHARPE FOR THE INTERVENER.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, FOR THE MAJORITY, AND DISSENTING DECISIONS OF BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFFE: SEPTEMBER 26, 1968.

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3. THE PARTIES AGREED AT THE HEARING THAT THE EVIDENCE ADDUCED AND THE REPRESENTATIONS MADE WITH REGARD TO THE INSTANT APPLICATION WOULD BE APPLIED TO THE APPLICATIONS FOR CERTIFICATION MADE BY THE APPLICANT WITH RESPECT TO EMPLOYEES OF THE GENERAL HOSPITAL OF PORT ARTHUR (BOARD FILE NO. 14345-67-R) AND MCKELLAR GENERAL HOSPITAL (BOARD FILE NO. 14346-67-R).

4. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR THE SAME UNIT OF EMPLOYEES AT THE RESPONDENT HOSPITAL, THE GENERAL HOSPITAL OF PORT ARTHUR AND MCKELLAR GENERAL HOSPITAL. THE UNIT WHICH THE APPLICANT IS SEEKING AT THE HOSPITALS IS ALL REGISTERED NURSING ASSISTANTS. THE INTERVENER SUBMITS THAT ALL THREE APPLICATIONS ARE UNTIMELY BY REASON OF THE FACT THAT THE REGISTERED NURSING ASSISTANTS ARE ALREADY COVERED BY COLLECTIVE AGREEMENTS BETWEEN THE INTERVENER AND THE HOSPITALS.

5. THE INTERVENER WAS CERTIFIED BY THE BOARD IN 1951 AS BARGAINING AGENT FOR UNITS OF EMPLOYEES AT THE THREE HOSPITALS. THE UNIT OF EMPLOYEES FOUND TO BE APPROPRIATE BY THE BOARD AT BOTH THE RESPONDENT HOSPITAL AND THE GENERAL HOSPITAL OF PORT ARTHUR WAS A UNIT COMPOSED OF ALL EMPLOYEES EMPLOYED AS NURSING ASSISTANTS, NURSES' (OR WARD) AIDES, WARD MAIDS, ORDERLIES, CLEANERS, KITCHEN AND DIETARY STAFF, LAUNDRY AND SEWING ROOM STAFF, ELEVATOR OPERATORS, MAINTENANCE MEN AND WAITRESSES. THE UNIT OF EMPLOYEES FOUND TO BE APPROPRIATE AT THE MCKELLAR GENERAL HOSPITAL WAS A UNIT COMPOSED OF ALL EMPLOYEES EMPLOYED AS MESSENGERS, LAUNDRY HELP, MAINTENANCE HELP, WATCHMEN, CLEANERS, HANDYMEN, KITCHEN AND DIETARY STAFF, WAITRESSES, DISHWASHERS, STORE PORTERS, PANTRY CLERKS, LINEN ROOM HELP, SEAMSTRESSES, WARD AIDES, NURSES AIDES AND ORDERLIES. THERE WAS AGREEMENT AMONG THE PARTIES THAT THE CLASSIFICATION OF "NURSING ASSISTANTS" IN THE FORMER TWO CERTIFICATES REFERRED TO "CERTIFIED NURSING ASSISTANTS" NOW KNOWN AS "REGISTERED NURSING ASSISTANTS".

6. ALBERT HEARN, THE CANADIAN DIRECTOR OF THE INTERVENER, TESTIFIED THAT AT THE TIME THE FIRST COLLECTIVE AGREEMENTS WERE NEGOTIATED WITH THE THREE HOSPITALS THERE WERE NO CERTIFIED NURSING ASSISTANTS EMPLOYED BY THE HOSPITALS AND FOR THAT REASON THIS CLASSIFICATION WAS EXCLUDED FROM THE SCHEDULE OF CLASSIFICATIONS COVERED BY THE COLLECTIVE AGREEMENTS WITH THE RESPONDENT HOSPITAL AND THE GENERAL HOSPITAL OF PORT ARTHUR. (THE CERTIFICATE ISSUED WITH RESPECT TO MCKELLAR GENERAL HOSPITAL DID NOT INCLUDE THE CLASSIFICATION OF NURSING ASSISTANTS). HIS EVIDENCE IS, HOWEVER, THAT SINCE THE THREE HOSPITALS HAVE HAD CERTIFIED NURSING ASSISTANTS (AND MORE RECENTLY REGISTERED NURSING ASSISTANTS) IN ITS EMPLOY, WHICH DATES BACK TO THE MID-1950'S, THE INTERVENER HAS ENDEAVOURED, WITHOUT SUCCESS UNTIL THIS YEAR, TO BARGAIN THE CLASSIFICATION INTO THE UNIT AT THE HOSPITALS CONCERNED. HEARN FURTHER TESTIFIED THAT THE INTERVENER HAD BEEN SUCCESSFUL FROM TIME TO TIME IN BARGAINING ADDITIONAL OCCUPATIONAL CLASSIFICATIONS INTO THE COVERAGE OF COLLECTIVE AGREEMENTS BETWEEN THE INTERVENER AND THE HOSPITALS WHEN THEY CAME UP FOR RENEWAL.

7. WE WOULD MENTION THAT THE INTERVENER AND THE THREE HOSPITALS HAVE BEEN PARTIES TO A CONTINUOUS SERIES OF COLLECTIVE AGREEMENTS FROM 1951 TO THE PRESENT TIME. THE MOST RECENT AGREEMENTS EXECUTED BY THE INTERVENER AND THE HOSPITALS WHICH ARE SEPARATE AGREEMENTS, ARE ALL DATED FEBRUARY 13TH, 1968. IT IS THESE AGREEMENTS WHICH THE INTERVENER ASSERTS ARE A BAR TO THE THREE APPLICATIONS MADE BY THE APPLICANT. THE DURATION CLAUSE IN EACH AGREEMENT PROVIDES THAT THE AGREEMENT IS TO BE EFFECTIVE FROM JANUARY 1ST, 1968 TO DECEMBER 31ST, 1969. THE RECOGNITION CLAUSE IN EACH AGREEMENT STATES THAT THE HOSPITAL RECOGNIZES THE INTERVENER AS THE SOLE AND EXCLUSIVE BARGAINING AGENT WITH RESPECT TO WAGES, HOURS AND WORKING CONDITIONS FOR THE EMPLOYEES OF THE HOSPITAL IN THE CLASSIFICATIONS LISTED ON SCHEDULE A ATTACHED TO THE AGREEMENT. SCHEDULE A OF EACH AGREEMENT SETS OUT SOME TWENTY-FIVE OCCUPATIONAL CLASSIFICATIONS INCLUDING REGISTERED NURSING ASSISTANTS.

8. HEARN'S EVIDENCE IS THAT THE INTERVENER NEGOTIATES JOINTLY WITH THE THREE ABOVE NAMED HOSPITALS AND THE WESTMOUNT HOSPITAL AND THE FORT WILLIAM SANATORIUM, ALL OF WHICH ARE LOCATED IN THE LAKEHEAD AREA. HEARN TESTIFIED THAT THE INTERVENER SUBMITTED ITS PROPOSALS ON OCTOBER 5TH, 1968 FOR THE RENEWAL OF THE COLLECTIVE AGREEMENTS IT HAD WITH ALL FIVE HOSPITALS WHICH AGREEMENTS HAD A COMMON EXPIRY DATE OF DECEMBER 31ST, 1967. ONE OF THE INTERVENER'S PROPOSALS WAS THAT THE RECOGNITION CLAUSE OF THE AGREEMENTS WITH THE RESPONDENT HOSPITAL, THE GENERAL HOSPITAL OF PORT ARTHUR AND THE MCKELLAR GENERAL HOSPITAL SHOULD BE AMENDED TO INCLUDE REGISTERED NURSING ASSISTANTS. NEGOTIATING SESSIONS TOOK PLACE ON OCTOBER 30TH AND 31ST AND AGAIN ON NOVEMBER 20TH, 21ST AND 22ND. ACCORDING TO HEARN, A REGISTERED NURSING ASSISTANT IN THE EMPLOY OF WESTMOUNT HOSPITAL WAS ON THE INTERVENER'S BARGAINING COMMITTEE. NO REGISTERED NURSING ASSISTANTS, HOWEVER, FROM THE RESPONDENT HOSPITAL, THE GENERAL HOSPITAL OF PORT ARTHUR OR THE MCKELLAR GENERAL HOSPITAL WERE ON THE BARGAINING COMMITTEE.

9. THE INTERVENER AND THE HOSPITALS WERE NOT ABLE TO REACH AGREEMENT ON A NUMBER OF ISSUES, INCLUDING THE UNION'S PROPOSAL TO INCORPORATE THE REGISTERED NURSING ASSISTANTS WITHIN THE SCOPE OF THE COLLECTIVE AGREEMENTS WITH THE ABOVE THREE NAMED HOSPITALS. THE INTERVENER AND THE HOSPITALS THEREUPON MADE JOINT APPLICATIONS FOR CONCILIATION SERVICES AND A CONCILIATION OFFICER WAS DULY APPOINTED. THE PARTIES MET AGAIN ON JANUARY 29TH, 1968, AT WHICH TIME THE THREE HOSPITALS CONCERNED AGREED FOR THE FIRST TIME, TO INCLUDE REGISTERED NURSING ASSISTANTS IN THE BARGAINING UNITS. THE PARTIES HELD FURTHER MEETINGS ON JANUARY 30TH AND 31ST, DURING WHICH AGREEMENT WAS REACHED ON ALL OTHER OUTSTANDING ISSUES WHICH WERE RECORDED IN A MEMORANDUM OF SETTLEMENT. THIS MEMORANDUM WAS APPROVED BY THE MEMBERSHIP OF THE INTERVENER EMPLOYED IN THE HOSPITALS AND THE INTERVENER AND THE HOSPITALS EXECUTED THE CURRENT COLLECTIVE AGREEMENTS ON OR ABOUT FEBRUARY 13TH, 1968.

10. JOAN HOWE, A REGISTERED NURSING ASSISTANT IN THE EMPLOY OF THE RESPONDENT HOSPITAL, TESTIFIED THAT THE REGISTERED NURSING ASSISTANTS HAVE HAD AN INFORMAL ASSOCIATION OVER A PERIOD OF YEARS WHICH ANNUALLY ELECTS OFFICERS. THESE OFFICERS HAVE REGULARLY MET WITH MANAGEMENT OF THE HOSPITAL ON A MONTHLY BASIS TO DISCUSS GRIEVANCES AND OTHER MATTERS RELATING TO THE WELFARE OF THE REGISTERED NURSING ASSISTANTS. ACCORDING TO THE EVIDENCE OF ELIZABETH AMES AND FLORENCE ALEXANDER, BOTH OF WHOM ARE EMPLOYED AS REGISTERED NURSING ASSISTANTS AT MCKELLAR GENERAL HOSPITAL, A SIMILAR TYPE OF ASSOCIATION WHICH FUNCTIONS IN THE SAME MANNER EXISTS AT THE LATTER HOSPITAL. WENDY HALL, A REGISTERED NURSING ASSISTANT AT THE GENERAL HOSPITAL OF PORT ARTHUR, TESTIFIED, HOWEVER, THAT THERE IS NO SUCH ASSOCIATION AT THAT HOSPITAL.

11. THE EVIDENCE OF JOAN HOWE, ELIZABETH AMES, FLORENCE ALEXANDER AND WENDY HALL IS THAT, TO THEIR KNOWLEDGE, NONE OF THE REGISTERED NURSING ASSISTANTS EMPLOYED AT THE RESPONDENT HOSPITAL, THE MCKELLAR GENERAL HOSPITAL OR THE GENERAL HOSPITAL OF PORT ARTHUR WERE EVER APPROACHED TO JOIN THE INTERVENER UNION PRIOR TO THE SIGNING OF THE CURRENT COLLECTIVE AGREEMENT ON FEBRUARY 13TH. INDEED, THEY ALL TESTIFIED THAT THEY ONLY LEARNED THAT THE HOSPITALS AND THE INTERVENER HAD INCLUDED THEM UNDER THE COVERAGE OF THE CURRENT COLLECTIVE AGREEMENTS, FROM OTHER EMPLOYEES, AFTER THE AGREEMENTS WERE EXECUTED. THEIR TESTIMONY IS THAT THEY IMMEDIATELY SOUGHT AND RECEIVED CONFIRMATION FROM MEMBERS OF MANAGEMENT OF THE THREE HOSPITALS THAT THE REGISTERED NURSING ASSISTANTS WERE INCLUDED IN THE BARGAINING UNIT. THEIR EVIDENCE IS THAT THE REGISTERED NURSING ASSISTANTS AT ALL THREE HOSPITALS THEREUPON PROMPTLY HELD MEETINGS WHICH CULMINATED IN THE FORMATION OF THE APPLICANT AND THE FILING OF THE INSTANT APPLICATION.

12. COUNSEL FOR THE APPLICANT SUBMITS THAT AT THE TIME THE RESPONDENT HOSPITALS AND THE INTERVENER ENTERED INTO ITS MOST RECENT PURPORTED COLLECTIVE AGREEMENTS DATED FEBRUARY 13TH, 1968, THE INTERVENER REPRESENTED NONE OF THE EMPLOYEES OF THE HOSPITALS EMPLOYED IN THE CLASSIFICATION OF REGISTERED NURSING ASSISTANTS. COUNSEL ARGUES THAT BY INCLUDING THIS CLASSIFICATION OF EMPLOYEES IN THE RECOGNITION CLAUSES IN THESE CIRCUMSTANCES THE AGREEMENTS ARE NOT COLLECTIVE AGREEMENTS AS DEFINED IN SECTION 1(1)(c) OF THE LABOUR RELATIONS ACT SINCE ACCORDING TO THE DEFINITION, THE TRADE UNION IN QUESTION MUST REPRESENT EMPLOYEES OF THE EMPLOYER. COUNSEL ARGUES THAT THE AGREEMENTS OF FEBRUARY 13TH, 1968 THEREFORE ARE NOT A BAR TO THE INSTANT APPLICATIONS. COUNSEL FURTHER SUBMITS THAT BY BARGAINING THE REGISTERED NURSING ASSISTANTS INTO THE AGREEMENTS WITHOUT THE INTERVENER HAVING ANY REPRESENTATION AMONG THEM AND WITHOUT EITHER OF THE PARTIES TO THE AGREEMENTS MAKING ANY INQUIRIES CONCERNING THEIR WISHES, THE REGISTERED NURSING ASSISTANTS WERE DENIED A RIGHT GUARANTEED TO THEM BY SECTION 3 OF THE ACT, NAMELY, THE RIGHT TO JOIN A TRADE UNION OF THEIR CHOICE.

13. COUNSEL FOR THE INTERVENER SUBMITS THAT THE EVIDENCE SHOWS THAT DURING THE COURSE OF THE INTERVENER'S LONG COLLECTIVE BARGAINING RELATIONSHIP WITH THE RESPONDENT HOSPITALS, THE PARTIES HAVE BARGAINED INTO COLLECTIVE AGREEMENTS A NUMBER OF CLASSIFICATIONS OF EMPLOYEES IN THE SAME MANNER AS THE REGISTERED NURSING ASSISTANTS HAVE BEEN BARGAINED INTO THE CURRENT COLLECTIVE AGREEMENTS. COUNSEL ARGUES THAT SECTION 45A HAS NO APPLICATION AS THAT SECTION ONLY CONTEMPLATES A CHALLENGE TO THE ENTITLEMENT OF A TRADE UNION TO REPRESENT EMPLOYEES DURING THE FIRST YEAR OF A COLLECTIVE AGREEMENT FOLLOWING VOLUNTARY RECOGNITION, WHICH IS NOT THE CIRCUMSTANCE IN THE INSTANT CASES. COUNSEL DREW AN ANALOGY BETWEEN THE BARGAINING INTO THE COLLECTIVE AGREEMENTS OF THE REGISTERED NURSING ASSISTANTS AND A SITUATION WHERE AN EMPLOYER ADDS A NEW DEPARTMENT TO HIS OPERATIONS. COUNSEL ARGUES THAT SUCH EMPLOYEES AS ARE HIRED FOR THE DEPARTMENT, WHETHER IN OLD OR NEW CLASSIFICATIONS, AUTOMATICALLY FALL WITHIN THE SCOPE OF ANY EXISTING COLLECTIVE AGREEMENT BINDING UPON THE EMPLOYER AS A NORMAL ACCRETION IN HIS WORK FORCE. COUNSEL ACCORDINGLY SUBMITS THAT THE INSTANT APPLICATIONS ARE UNTIMELY BY REASON OF THE FACT THAT THE REGISTERED NURSING ASSISTANTS ARE ALREADY COVERED BY EXISTING COLLECTIVE AGREEMENTS IN EFFECT BETWEEN THE HOSPITALS AND THE INTERVENER.

14. DEALING FIRST WITH THE SUBMISSIONS OF COUNSEL FOR THE APPLICANT, ALTHOUGH WE ARE SATISFIED ON THE EVIDENCE THAT THE INTERVENER DID NOT REPRESENT ANY OF THE REGISTERED NURSING ASSISTANTS AT THE THREE RESPONDENT HOSPITALS AT THE TIME THE CURRENT COLLECTIVE AGREEMENTS WERE EXECUTED, THE INTERVENER DID REPRESENT EMPLOYEES IN OTHER OCCUPATIONAL CLASSIFICATIONS COVERED BY THE AGREEMENTS. WE THEREFORE FIND THAT THE COLLECTIVE AGREEMENTS ENTERED INTO BY THE INTERVENER AND THE HOSPITALS DATED FEBRUARY 13TH, 1968 ARE COLLECTIVE AGREEMENTS AS DEFINED IN SECTION 1(1)(c) OF THE ACT. FURTHER, WHILE SECTION 3 OF THE ACT PROVIDES THAT EMPLOYEES ARE FREE TO JOIN A TRADE UNION OF THEIR OWN CHOICE, UNDER THE CERTIFICATION PROVISIONS OF THE ACT, THEY CAN ONLY BE REPRESENTED IN COLLECTIVE BARGAINING BY THAT UNION IF A MAJORITY OF THEIR FELLOW EMPLOYEES IN THE UNIT ALSO WISH TO BE REPRESENTED BY THE SAME UNION.

15. BEFORE DEALING SPECIFICALLY WITH THE SUBMISSIONS OF COUNSEL FOR THE INTERVENER CERTAIN SALIENT FACTS ESTABLISHED IN EVIDENCE SHOULD BE EMPHASIZED. FIRST OF ALL, NEITHER PRIOR TO NOR DURING THE NEGOTIATIONS FOR THE CURRENT AGREEMENT DID THE INTERVENER SIGN A SINGLE REGISTERED NURSING ASSISTANT INTO MEMBERSHIP AT ANY OF THE THREE RESPONDENT HOSPITALS. INDEED, NONE OF THEM WERE EVEN ASKED TO JOIN THE INTERVENER. OUR CONCLUSION IS THAT THE INTERVENER DELIBERATELY KEPT THE REGISTERED NURSING ASSISTANTS IN IGNORANCE OF THE UNION'S PROPOSAL TO INCLUDE THEM IN THE BARGAINING UNIT UNTIL AFTER THE AGREEMENTS WERE EXECUTED.

FOR THAT MATTER IT APPEARS THAT THE HOSPITALS ALSO DID NOT ADVISE THE REGISTERED NURSING ASSISTANTS THAT THEIR INCORPORATION INTO THE EXISTING BARGAINING UNIT WAS A SUBJECT MATTER OF NEGOTIATION, DESPITE THE FACT THAT AT TWO OF THE HOSPITALS MEMBERS OF MANAGEMENT MET REGULARLY WITH REPRESENTATIVES OF THE REGISTERED NURSING ASSISTANTS. THEY ONLY LEARNED OF THEIR INCLUSION WITHIN THE SCOPE OF THE CURRENT COLLECTIVE AGREEMENTS FROM OTHER EMPLOYEES AFTER THE AGREEMENTS WERE SIGNED. SUBSEQUENTLY, UPON THEIR OWN INQUIRIES, THIS FACT WAS CONFIRMED BY THE HOSPITALS. IN OTHER WORDS, THE REGISTERED NURSING ASSISTANTS AT ALL THREE HOSPITALS WERE TOTALLY DEPRIVED OF ANY OPPORTUNITY TO EXPRESS THEIR DESIRES PRIOR TO THE INTERVENER AND THE HOSPITALS INCORPORATING THEM INTO THE BARGAINING UNITS COVERED BY THE AGREEMENTS.

16. LET US NOW LOOK AT THE APPLICABILITY OF SECTION 45A OF THE ACT TO THE INSTANT SITUATION. THE INTERVENER AND THE HOSPITALS HAVE BEEN PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS OVER A PERIOD OF MANY YEARS. THE RESPONDENT HOSPITALS, HOWEVER, ONLY VOLUNTARILY RECOGNIZED THE INTERVENER AS BARGAINING AGENT FOR THE REGISTERED NURSING ASSISTANTS FOR THE FIRST TIME DURING THE NEGOTIATIONS FOR THE CURRENT COLLECTIVE AGREEMENTS. WE SEE NO REAL DISTINCTION BETWEEN THE INCORPORATION OF THIS CLASSIFICATION OF EMPLOYEES INTO THE BARGAINING UNITS COVERED BY THE RE-NEWED COLLECTIVE AGREEMENTS THAT WERE EXECUTED ON FEBRUARY 13TH OF THIS YEAR AND THE VOLUNTARY RECOGNITION OF THE INTERVENER AS BARGAINING AGENT FOR UNITS COMPOSED SOLELY OF REGISTERED NURSING ASSISTANTS AND THE SUBSEQUENT ENTERING INTO SEPARATE COLLECTIVE AGREEMENTS COVERING THESE EMPLOYEES. IN EFFECT THEN, THE CURRENT COLLECTIVE AGREEMENTS BETWEEN THE INTERVENER AND THE HOSPITALS ARE FIRST AGREEMENTS AS THEY RELATE TO THE REGISTERED NURSING ASSISTANTS. THIS BEING SO, SECTION 45A IS AVAILABLE TO THE APPLICANT WHO IS CHALLENGING THE RIGHT OF THE INTERVENER TO REPRESENT THE REGISTERED NURSING ASSISTANTS. IN VIEW OF THE BOARD'S FINDING THAT AT THE TIME THE CURRENT COLLECTIVE AGREEMENTS WERE ENTERED INTO THE INTERVENER REPRESENTED NONE OF THE REGISTERED NURSING ASSISTANTS AT THE THREE HOSPITALS, THE BOARD, PURSUANT TO SECTION 45A OF THE ACT, DECLARES THAT THE INTERVENER, AT THE RELEVANT TIME, WAS NOT ENTITLED TO REPRESENT THE REGISTERED NURSING ASSISTANTS IN THE EMPLOY OF THE RESPONDENT HOSPITALS. ACCORDINGLY, THE COLLECTIVE AGREEMENTS EXECUTED ON FEBRUARY 13TH, 1968 ARE VOID WITH RESPECT TO THE REGISTERED NURSING ASSISTANTS AND ARE NOT A BAR TO THE INSTANT APPLICATIONS FOR CERTIFICATION OF THE APPLICANT. WE WOULD ADD THAT SINCE THAT ACTION OF THE APPLICANT AND THE HOSPITALS IN RELATION TO THE REGISTERED NURSING ASSISTANTS WAS TANTAMOUNT TO ENTERING INTO A FIRST AGREEMENT COVERING THIS CLASSIFICATION OF EMPLOYEES, THE ABOVE FINDING IS CONSISTENT WITH THE PROVISIONS OF SECTION 45A(4) OF THE ACT. (SEE ESSEX HEALTH ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1968, P. 974.)

17. WE WOULD POINT OUT THAT WERE THE BOARD TO INTERPRET SECTION 45A IN ANY OTHER MANNER, IT WOULD THWART THE SECTION'S CLEAR INTENT AND THE REASON FOR ITS ENACTMENT. THAT IS TO SAY, THE BOARD WOULD BE CONDONING AN EMPLOYER'S VOLUNTARY RECOGNITION OF A TRADE UNION AS BARGAINING AGENT FOR CLASSIFICATION OF EMPLOYEES, NOT PREVIOUSLY REPRESENTED BY THAT TRADE UNION, IN THE FACE OF EVIDENCE OF TOTAL OPPOSITION BY THE EMPLOYEES CONCERNED TO BE REPRESENTED IN COLLECTIVE BARGAINING BY THAT PARTICULAR UNION. WE WOULD ADD FURTHER THAT WERE THE BOARD TO PERMIT THE INTERVENER TO SECURE THE BARGAINING RIGHTS FOR REGISTERED NURSING ASSISTANTS IN THE MANNER IN WHICH IT HAS ATTEMPTED TO DO SO, THE REGISTERED NURSING ASSISTANTS WOULD NOT BE ABLE TO TERMINATE THOSE BARGAINING RIGHTS UNLESS A MAJORITY OF THE EMPLOYEES IN THE OVER-ALL UNIT EXPRESSED A SIMILAR DESIRE. IN THESE CIRCUMSTANCES, TO ALLOW THE INTERVENER TO VIRTUALLY PERMANENTLY "CAPTURE" THE REGISTERED NURSING ASSISTANTS WHEN IT IS OBVIOUS THAT THE INTERVENER HAS NO SUPPORT WHATSOEVER AMONG THIS GROUP PATENTLY WOULD BE INEQUITABLE.

18. IT IS IMPORTANT TO BEAR IN MIND THAT ENTIRELY DIFFERENT CONSIDERATIONS ARE APPLICABLE WHEN A BARGAINING UNIT IS DESCRIBED IN TERMS OF "ALL EMPLOYEES" AS OPPOSED TO SPECIFIC OCCUPATIONAL CLASSIFICATIONS. IN THE FORMER CASE EMPLOYEES EMPLOYED IN NEWLY CREATED OCCUPATIONAL CLASSIFICATIONS OR A NEW DEPARTMENT OF AN EMPLOYER'S OPERATIONS AUTOMATICALLY FALL INTO THE BARGAINING UNIT BY VIRTUE OF THE ALL ENCOMPASSING SCOPE OF THE UNIT. THIS IS NOT ARBITRARY AS NEW EMPLOYEES BEING HIRED IN THESE NEW CLASSIFICATIONS OR IN A NEW DEPARTMENT ARE AWARE THAT UPON ACCEPTING EMPLOYMENT WITH THE EMPLOYER THEY IMMEDIATELY BECOME MEMBERS OF THE UNIT. THE SAME OF COURSE HOLDS TRUE FOR EMPLOYEES HIRED IN OCCUPATIONAL CLASSIFICATIONS THAT WERE IN EXISTENCE AT THE TIME THE TRADE UNION ACQUIRED THE BARGAINING RIGHTS FOR AN "ALL EMPLOYEE" UNIT. MOREOVER, AT THE TIME THE UNION INITIALLY ACQUIRED THE BARGAINING RIGHTS FOR AN "ALL EMPLOYEE" UNIT, WHETHER BY CERTIFICATION OR VOLUNTARY RECOGNITION, THE EMPLOYEES THEN IN THE EMPLOY OF THE EMPLOYER HAD THE OPPORTUNITY TO EXPRESS THEIR OPPOSITION TO THE UNION IN THE CASE OF CERTIFICATION OR TO CHALLENGE THE RIGHT OF THE UNION TO REPRESENT THEM IN THE CASE OF VOLUNTARY RECOGNITION.

19. A DIFFERENT SITUATION EXISTS, HOWEVER, WHERE THE UNIT IS DESCRIBED IN TERMS OF SPECIFIC OCCUPATIONAL CLASSIFICATIONS. AT THE TIME THE TRADE UNION ORIGINALLY ACQUIRED THE BARGAINING RIGHTS FOR THE SPECIFIED CLASSIFICATIONS, WHETHER BY CERTIFICATION OR VOLUNTARY RECOGNITION, EMPLOYEES IN OTHER CLASSIFICATIONS NOT INCLUDED IN THE UNIT WOULD HAVE NO REASON TO ADOPT ANY POSITION WITH RESPECT TO THE UNION SINCE THE SCOPE OF ITS BARGAINING RIGHTS WOULD NOT AFFECT THEM. HOWEVER, TO PERMIT THE EMPLOYER AND THE UNION AT SOME LATER TIME TO BARGAIN ADDITIONAL CLASSIFICATIONS INTO THE UNIT WITHOUT GIVING THE EMPLOYEES CONCERNED ANY OPPORTUNITY TO CHALLENGE THE RIGHT OF THE UNION TO REPRESENT THEM WOULD BE TO FLAGRANTLY DISREGARD THOSE RIGHTS AND INTERESTS OF EMPLOYEES WHICH THE LABOUR RELATIONS ACT IS DESIGNED TO PROTECT.

20. REFERRING NOW TO THE CONSTITUTION OF THE APPLICANT, ARTICLE III PROVIDES THAT MEMBERSHIP IN THE ASSOCIATION IS OPEN TO ALL REGISTERED NURSING ASSISTANTS EMPLOYED BY EMPLOYERS IN THE LAKEHEAD AREA ON A FULL-TIME OR ON A PART-TIME BASIS. THE BOARD HAS FOUND, HOWEVER, THAT REGISTERED NURSING ASSISTANTS BY THEMSELVES DO NOT CONSTITUTE AN APPROPRIATE UNIT OF EMPLOYEES FOR COLLECTIVE BARGAINING (SEE BOARD OF HEALTH OF THE YORK COUNTY HEALTH UNIT CASE, O.L.R.B. MONTHLY REPORT, APRIL 1967, P. 62 AND ESSEX HEALTH ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1967, P. 716). THE ONLY APPROPRIATE UNIT WOULD BE A TAG-END UNIT. THAT IS TO SAY, ALL THOSE CLASSIFICATIONS OF EMPLOYEES AT THE HOSPITALS, INCLUDING THE REGISTERED NURSING ASSISTANTS, NOT ALREADY REPRESENTED BY A TRADE UNION. COUNSEL FOR THE RESPONDENTS AT THE HEARING IN THIS MATTER ADVISED THE BOARD THAT THERE WERE OTHER OCCUPATIONAL CLASSIFICATIONS EMPLOYED BY THE HOSPITALS WHO WERE NOT REPRESENTED BY A BARGAINING AGENT. THE MEMBERSHIP PROVISIONS OF THE APPLICANT'S CONSTITUTION, HOWEVER, DO NOT PERMIT THE APPLICANT TO TAKE ANY OTHER OCCUPATIONAL CLASSIFICATIONS INTO MEMBERSHIP. EVEN ASSUMING, FOR PURPOSES OF ARGUMENT, THAT, AT PRESENT, THE REGISTERED NURSING ASSISTANTS ARE THE ONLY CLASSIFICATION NOT REPRESENTED BY A TRADE UNION, IF THE BOARD WERE TO FIND A UNIT DESCRIBED IN TERMS OF A TAG-END TO BE APPROPRIATE, ANY NEW CLASSIFICATIONS OF EMPLOYEES HIRED BY THE RESPONDENT HOSPITALS WOULD FALL INTO SUCH A UNIT. AGAIN, IN LIGHT OF THE LIMITATION OF MEMBERSHIP IN THE APPLICANT TO REGISTERED NURSING ASSISTANTS, THE APPLICANT COULD NOT TAKE THESE NEW CLASSIFICATIONS INTO MEMBERSHIP. IN THIS SET OF CIRCUMSTANCES, THE BOARD FINDS THAT THERE IS NO APPROPRIATE UNIT AT ANY OF THE RESPONDENT HOSPITALS WHICH THE APPLICANT COULD REPRESENT.

21. THE APPLICATION, ACCORDINGLY, MUST BE DISMISSED.

DECISION OF BOARD MEMBER H. F. IRWIN: SEPTEMBER 26, 1968.

1. I CONCUR IN THE MAJORITY DECISION THAT:

- (A) - THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT;
- (B) - THE REGISTERED NURSING ASSISTANTS ARE NOT BOUND BY THE COLLECTIVE AGREEMENT MADE BETWEEN THE RESPONDENT AND THE INTERVENER AND DATED FEBRUARY 13TH, 1968; AND
- (C) - THE INSTANT APPLICATION IS CONSEQUENTLY TIMELY.

2. I DISSENT FROM THAT PART OF THE MAJORITY DECISION THAT FINDS THAT A BARGAINING UNIT COMPOSED SOLELY OF REGISTERED NURSING ASSISTANTS IS INAPPROPRIATE FOR COLLECTIVE BARGAINING.

3. TO ADHERE TO THE BOARD'S POLICY IN THE INSTANT CASE IS UNTENABLE. HERE IS A LARGE GROUP OF HOSPITAL EMPLOYEES WITH SPECIAL SKILLS AND INTERESTS THAT ARE READILY DISTINGUISHABLE FROM THE OTHER EMPLOYEES. THEY HAVE EXPRESSED THEIR DESIRE FOR COLLECTIVE BARGAINING THROUGH A TRADE UNION OF THEIR OWN CHOICE BUT ARE DENIED THIS RIGHT, WHICH IS CONTEMPLATED UNDER THE LABOUR RELATIONS ACT, BECAUSE THE BOARD HAS RULED THE BARGAINING UNIT TO BE INAPPROPRIATE. THE BOARD HAS DECLARED IN CASE AFTER CASE THAT A BARGAINING UNIT COMPOSED SOLELY OF REGISTERED NURSES AND GRADUATE NURSES IS APPROPRIATE FOR COLLECTIVE BARGAINING. WHY THEN ARE NOT REGISTERED NURSING ASSISTANTS AN APPROPRIATE BARGAINING UNIT? THEY ARE ACKNOWLEDGED AS QUALIFIED MEMBERS OF THE NURSING TEAM THAT GIVES BEDSIDE CARE TO PATIENTS UNDER THE SUPERVISION OF A REGISTERED NURSE OR A QUALIFIED MEDICAL PRACTITIONER.

4. THE STATUS OF REGISTERED NURSING ASSISTANTS IS RECOGNIZED UNDER THE NURSES ACT, STATUTES OF ONTARIO 1961-62, c. 90. REGISTERED NURSES AND REGISTERED NURSING ASSISTANTS ARE THE ONLY HOSPITAL EMPLOYEES THAT ARE SUBJECT TO THE PROVISIONS OF THE NURSES ACT. THIS CLEARLY DISTINGUISHES THEM FROM OTHER HOSPITAL EMPLOYEES. THEIR OWN PROVINCIAL ORGANIZATION KNOWN AS THE ONTARIO ASSOCIATION OF REGISTERED NURSING ASSISTANTS IS GIVEN OFFICIAL STATUS AND RECOGNITION UNDER THAT ACT.

5. UNDER THE NURSES ACT AND THE REGULATIONS MADE THEREUNDER, THE SAID ASSOCIATION IS AUTHORIZED TO APPOINT MEMBERS TO THE COUNCIL OF NURSES WHICH ADMINISTERS THE AFFAIRS OF THE COLLEGE OF NURSES OF ONTARIO. THE COUNCIL IS AUTHORIZED UNDER THE ACT INTER ALIA TO MAKE REGULATIONS -

- (A) GOVERNING THE COMPOSITION OF THE COUNCIL;
- (B) FIXING THE REMUNERATION OF THE MEMBERS OF THE COUNCIL;
- (C) PRESCRIBING THE POWERS OF THE COUNCIL AND THE PROCEDURE OF THE COUNCIL AT ITS MEETINGS;
- (D) PRESCRIBING THE REQUIREMENTS FOR APPROVAL OF TRAINING CENTRES FOR REGISTERED NURSING ASSISTANTS AND FOR THE CANCELLATION OF SUCH APPROVAL;
- (E) PROVIDING FOR THE INSPECTION OF TRAINING CENTRES;
- (F) PRESCRIBING FOR ADMISSION TO TRAINING CENTRES AND THE COURSES OF INSTRUCTION THEREIN;

- (G) PROVIDING FOR THE HOLDING OF EXAMINATIONS FOR PERSONS WHO ARE IN ATTENDANCE AT OR GRADUATES OF TRAINING CENTRES;
- (H) FOR THE REGISTRATION OF GRADUATES OF TRAINING CENTRES LOCATED WITHIN OR WITHOUT ONTARIO AND THE ISSUE, SUSPENSION, CANCELLATION AND RENEWAL OF REGISTRATION;
- (I) PRESCRIBING THE FEES FOR EXAMINATIONS, REGISTRATION AND RENEWAL OF REGISTRATION OF NURSING ASSISTANTS;
- (J) GOVERNING THE DISCIPLINARY POWERS OF THE COUNCIL OR A COMMITTEE OF THE COUNCIL WITH RESPECT TO REGISTERED NURSING ASSISTANTS, INCLUDING THE POWER TO SUSPEND OR CANCEL THEIR REGISTRATION;
- (K) PRESCRIBING THE STANDARDS FOR APPROVAL OF NURSING REGISTRIES; AND
- (L) PROVIDING FOR THE APPOINTMENT, COMPOSITION, POWERS AND DUTIES OF THE EDUCATIONAL ADVISORY COMMITTEE.

SECTION 9(2) OF THE NURSES ACT PROVIDES THAT NO PERSON SHALL USE THE TITLE "REGISTERED NURSING ASSISTANT" OR "CERTIFIED NURSING ASSISTANT" OR THE DESIGNATION "R.N.A." OR "C.N.A." UNLESS SUCH PERSON IS REGISTERED AS A NURSING ASSISTANT UNDER THAT ACT.

6. WHAT MORE CONCLUSIVE EVIDENCE DOES THE BOARD NEED TO MAKE A FINDING THAT REGISTERED NURSING ASSISTANTS HAVE INTERESTS, DUTIES AND RESPONSIBILITIES THAT ARE READILY DISTINGUISHABLE AND SEPARATE FROM THE OTHER HOSPITAL EMPLOYEES AND THEREBY CONSTITUTE AN APPROPRIATE BARGAINING UNIT? HOW CAN THE BOARD JUSTIFY CONTINUING TO INSIST THAT REGISTERED NURSING ASSISTANTS BE INCLUDED IN A BARGAINING UNIT ALONG WITH GENERAL LABOUR CLASSIFICATIONS SUCH AS EMPLOYEES IN THE HOSPITAL LAUNDRIES, KITCHENS, DINING ROOMS AS WELL AS THE CLEANING AND MAINTENANCE STAFFS?

7. ALTHOUGH NOT ADDUCED AS EVIDENCE AT THE HEARING, IT IS A WELL-KNOWN AND ESTABLISHED FACT THAT BARGAINING UNITS COMPOSED SOLELY OF REGISTERED NURSING ASSISTANTS EMPLOYED IN HOSPITALS IN THE PROVINCE OF NEW BRUNSWICK ARE REGULARLY BEING DECLARED AN APPROPRIATE BARGAINING UNIT BY THE NEW BRUNSWICK LABOUR RELATIONS BOARD AND THAT THE LOCAL BRANCH OF THE ASSOCIATION OF NEW BRUNSWICK REGISTERED NURSING ASSISTANTS IS BEING CERTIFIED AS THEIR BARGAINING AGENT. REGISTERED NURSING ASSISTANTS IN ONTARIO SHOULD NOT BE TREATED AS INFERIORS OR LESS FAVOURABLY THAN REGISTERED NURSING ASSISTANTS IN NEW BRUNSWICK.

8. FOR THESE REASONS, I WOULD HAVE FOUND THAT A BARGAINING UNIT COMPOSED SOLELY OF REGISTERED NURSING ASSISTANTS TO BE APPROPRIATE FOR COLLECTIVE BARGAINING AND CERTIFIED THE APPLICANT UNION AS BARGAINING AGENT.

DECISION OF BOARD MEMBER P. J. O'KEEFFE:

SEPTEMBER 26, 1968.

WHILE I CONCUR IN THE DECISION OF THE MAJORITY THAT THE REGISTERED NURSING ASSISTANTS BY THEMSELVES DO NOT CONSTITUTE AN APPROPRIATE BARGAINING UNIT AND WOULD DISMISS THIS APPLICATION, I AM UNABLE TO AGREE WITH MY COLLEAGUES IN THEIR OPINIONS AS EXPRESSED IN PARAGRAPHS 16, 17, 18 AND 19 THEREOF.

IN PARAGRAPH 16 THE MAJORITY FINDS THAT SECTION 45A OF THE ACT HAS APPLICATION IN THE INSTANT CASE. I DISAGREE WITH MY COLLEAGUES IN THIS POSITION AND FIND FROM A READING OF 45A THAT THE BOARD HAS NO JURISDICTION UNDER THIS SECTION TO APPLY IT TO THE FACT SITUATION IN THIS CASE.

SECTION 45A IS IN CLEAR AND UNAMBIGUOUS LANGUAGE AND HAS APPLICATION ONLY WHERE A TRADE UNION HAS NOT BEEN CERTIFIED AS THE BARGAINING AGENT. THERE IS NO DISPUTE IN THE INSTANT CASE THAT THE INTERVENER HAS BEEN CERTIFIED AS THE BARGAINING AGENT BY THIS BOARD FOR THE NURSING ASSISTANTS AND OTHER CLASSIFICATIONS (SEE PARAGRAPH 5 OF THE MAJORITY DECISION). THERE IS NO DISPUTE BETWEEN THE PARTIES THAT THE INTERVENER UNION WAS CERTIFIED FOR "CERTIFIED NURSING ASSISTANTS". THE TITLE "CERTIFIED NURSING ASSISTANTS" WAS CHANGED SOME YEARS AGO TO THAT OF "REGISTERED NURSING ASSISTANTS".

IN THE ORIGINAL CERTIFICATION THE INTERVENER UNION WAS CERTIFIED BY THIS BOARD FOR A UNIT INCLUDING A CLASSIFICATION OF EMPLOYEES NOW CALLED "REGISTERED NURSING ASSISTANTS". THE REASONS WHY THIS CLASSIFICATION OF EMPLOYEES WAS NOT INCLUDED IN THE FIRST AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT IS SET OUT IN PARAGRAPH 6 OF THE MAJORITY DECISION. SINCE THE INTERVENER WAS, IN FACT, CERTIFIED AS BARGAINING AGENT FOR THE REGISTERED NURSING ASSISTANTS, THIS BOARD HAS NO JURISDICTION UNDER SECTION 45A OF THE ACT TO REVIEW THE BARGAINING RELATIONSHIP BETWEEN THE RESPONDENT AND THE INTERVENER.

TO SUGGEST, AS THE MAJORITY SUGGESTS, THAT A CERTIFIED TRADE UNION AND AN EMPLOYER CANNOT BARGAIN CERTAIN CLASSIFICATIONS OF EMPLOYEES IN OR OUT OF A COLLECTIVE AGREEMENT WITHOUT THE APPROVAL OF THIS LABOUR RELATIONS BOARD IS TO DEMONSTRATE A COMPLETE LACK OF KNOWLEDGE OF EVERYDAY GIVE AND TAKE OF COLLECTIVE BARGAINING AND SOPHISTICATED BARGAINING RELATIONSHIPS BETWEEN MANAGEMENT AND CERTIFIED TRADE UNIONS. WE KNOW FROM THE EVIDENCE

IN THIS CASE THAT THE PARTIES TO THE COLLECTIVE AGREEMENT HAVE SINCE 1951 BARGAINED CERTAIN CLASSIFICATIONS IN AND OUT OF THE AGREEMENT. THIS IS THE INTERPLAY BETWEEN MANAGEMENT AND LABOUR, AND INDEED IS THE KIND OF INTERPLAY AND RELATIONSHIP WHICH THE LABOUR RELATIONS ACT ENCOURAGES. IN THE PAST THE UNION NEGOTIATED CERTAIN CLASSIFICATIONS OUT OF THE AGREEMENT, AT WHAT COST IN TERMS OF A SETTLEMENT WE DO NOT KNOW. IN THE INSTANT CASE THEY HAVE BARGAINED THE CLASSIFICATION OF REGISTERED NURSING ASSISTANTS BACK INTO THE BARGAINING UNIT, AGAIN AT WHAT COST IN TERMS OF THE OVER-ALL SETTLEMENT WE ARE NOT AWARE. WHY SHOULD WE CONCERN OURSELVES WITH A COLLECTIVE BARGAINING RELATIONSHIP BETWEEN THE PARTIES THAT APPEARS TO BE WORKING WELL AND IN ACCORDANCE WITH THE EXPRESSED WISHES OF THE LEGISLATION COVERING INDUSTRIAL RELATIONS TO PROVIDE FOR ORDERLY COLLECTIVE BARGAINING RELATIONSHIPS BETWEEN UNIONS AND MANAGEMENT. THE FOREGOING PRACTICAL RELATIONSHIP BETWEEN MANAGEMENT AND LABOUR IN COLLECTIVE BARGAINING HAS BEEN RECOGNIZED IN THE BOARD'S RECENT DECISION IN KELSEY-HAYES CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1968, P. 1058.

THE REGISTERED NURSING ASSISTANTS IN THE INSTANT CASE, AS A RESULT OF BARGAINING BETWEEN THE PARTIES, ARE IN A UNIT OF EMPLOYEES THAT IS CONSISTENT WITH THE BOARD'S USUAL PRACTICE, ALTHOUGH THE CURRENT DESCRIPTION OF THE BARGAINING UNIT IS STILL IN THE TERMS USED BY THE BOARD IN DESCRIBING BARGAINING UNITS IN 1951. ALTHOUGH THE BOARD'S PRACTICE IN DESCRIBING BARGAINING UNITS HAS CHANGED OVER THE YEARS IT REMAINS THE BOARD'S USUAL PRACTICE TO INCLUDE REGISTERED NURSING ASSISTANTS IN BARGAINING UNITS WITH THE CLASSIFICATION REPRESENTED BY THE INTERVENER IN THIS CASE. IN FACT, IF THE INTERVENING UNION WERE TO COME BEFORE THIS BOARD FOR CERTIFICATION FOR A LIKE GROUP OF EMPLOYEES, THIS BOARD WOULD NOT EXCLUDE REGISTERED NURSING ASSISTANTS FROM THIS UNIT BECAUSE IT WOULD DO VIOLENCE TO ITS NORMAL PRACTICE IN DEFINING HOSPITAL UNITS. THE BOARD ESTABLISHES IF THE UNION HAS THE REQUIRED MAJORITY OF EMPLOYEES FOR A VOTE OR CERTIFICATION ONLY ON THE BASIS OF THE OVER-ALL NUMBER OF EMPLOYEES IN THE UNIT. IT DOES NOT CONCERN ITSELF WHETHER THE UNION HAS A MAJORITY IN EACH CLASSIFICATION, OR IN FACT IF IT HAS ANY EMPLOYEES SIGNED UP IN A PARTICULAR CLASSIFICATION. THE BOARD LOOKS ONLY TO THE UNION'S OVER-ALL MEMBERSHIP POSITION.

IF THE REGISTERED NURSING ASSISTANTS FORMED AN APPROPRIATE BARGAINING UNIT WHICH THE BOARD WOULD CERTIFY RATHER THAN INCLUDING THEM IN A BARGAINING UNIT WITH OTHER EMPLOYEES, AND IF THE BOARD HAD NOT CERTIFIED THE APPLICANT AS BARGAINING AGENT FOR A UNIT WHICH INCLUDED THE REGISTERED NURSING ASSISTANTS, SECTION 45A MIGHT HAVE BEEN AVAILABLE TO THE APPLICANT. HOWEVER SUCH IS NOT THE CASE. THE BOARD HAS DETERMINED IN THE ESSEX HEALTH ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1967, P. 716, THAT REGISTERED NURSING ASSISTANTS DO NOT FORM A UNIT APPROPRIATE FOR COLLECTIVE BARGAINING. ALSO THE INTERVENER IN THIS CASE WAS CERTIFIED AS BARGAINING AGENT FOR THIS AND OTHER CLASSIFICATIONS EMPLOYED BY THE RESPONDENT.

IT THEREFORE FOLLOWS, IN THESE CIRCUMSTANCES, THAT THE BOARD HAS NO JURISDICTION UNDER SECTION 45A OF THE ACT TO INTERFERE WITH THE BARGAINING RELATIONSHIP BETWEEN THE RESPONDENT AND THE INTERVENER.

14593-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CRANE CANADA LIMITED (RESPONDENT) V. INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O.-C.L.C. (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: LORNE INGLE, DON WILTON, BEN DES ROCHES FOR THE APPLICANT, JOHN W. BLACK, R. MURRAY GRANT, D. CHURCHILL-SMITH FOR THE RESPONDENT AND R. KOSKIE, M. CAPRI FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 18, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN BOTH THE APPLICANT AND THE INTERVENER APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE RESPONDENT.
2. AT THE HEARINGS IN THIS MATTER THE PARTIES ADDUCED EVIDENCE AND ARGUMENT CONCERNING THE APPLICANT'S ALLEGATIONS AGAINST THE INTERVENER. THE APPLICANT CALLED EVIDENCE WHICH INDICATED THAT AN OFFICIAL OF THE INTERVENER WHO WAS IN CHARGE OF THE INTERVENER'S ORGANIZING CAMPAIGN, ENGAGED IN THE PRACTICE OF SECURING MEMBERSHIP EVIDENCE ON THE BASIS OF CONDITIONAL PAYMENT.
3. ON THE BASIS OF ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, WE FIND THAT THE INTERVENER'S ORGANIZER MADE STATEMENTS TO EMPLOYEES OF THE RESPONDENT WHEREIN THE EMPLOYEES WERE LED TO BELIEVE THAT IF THE INTERVENER'S APPLICATION FOR CERTIFICATION WAS NOT SUCCESSFUL THE MONEY PAID BY THEM AS AN INITIATION FEE WOULD BE RETURNED TO THEM. IN THESE CIRCUMSTANCES AND FOR THE FOREGOING REASONS GIVEN BY THE BOARD IN THE DE LAVAL COMPANY LIMITED CASE, 52 C.L.L.C., ¶17,021, THE BOARD'S REQUIREMENT THAT THERE BE A FINANCIAL SACRIFICE ON THE PART OF THE PROSPECTIVE UNION MEMBER HAS NOT BEEN MET AND THEREFORE NO RELIANCE CAN BE PLACED ON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE INTERVENER IN THIS CASE.
4. THE APPLICATION OF THE INTERVENER IS THEREFORE DISMISSED.
5. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

6. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED JULY 3RD, 1968 AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

7. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT B. F. BRODIE, A PERSON CLASSIFIED BY THE RESPONDENT AS ASSISTANT FOREMAN EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS NOT AN EMPLOYEE OF THE RESPONDENT IN THE BARGAINING UNIT AND THAT J. DOBBS, M. MOITRA AND J. PURSLOW, PERSONS CLASSIFIED BY THE RESPONDENT AS LABORATORY TECHNICIANS ARE NOT APPROPRIATE FOR INCLUSION IN THE "PLANT UNIT" AND THEREFORE ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT, AND THAT D. MITCHELL, PERSON CLASSIFIED BY THE RESPONDENT AS MANUFACTURING ENGINEERING CLERK, WHO IS EMPLOYED IN THE ENGINEERING DEPARTMENT, IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

8. HAVING FURTHER REGARD TO THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO AND HAVING APPLIED THE CRITERIA ENUNCIATED BY THE BOARD IN THE FALCONBRIDGE NICKEL MINE LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379, THE BOARD FINDS THAT PERSONS CLASSIFIED BY THE RESPONDENT AS SHIPPING AND RECEIVING CLERKS AND QUALITY CONTROL INSPECTORS DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON MAY 21ST, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14630-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FERRANTI-
PACKARD ELECTRIC LIMITED (RESPONDENT) V. THE SALARIED EMPLOYEES
ASSOCIATION OF FERRANTI-PACKARD ST. CATHARINES DIVISION (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS R. W. TEAGLE
AND E. BOYER:

APPEARANCES AT THE HEARING: D. M. STOREY AND B. ORMSBY FOR THE
APPLICANT; R. S. MONTGOMERY, Q.C., AND E. J. BATES FOR THE
RESPONDENT; AND N. H. PURNELL FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 20, 1968.

. . .

2. FOLLOWING THE HEARING OF THIS MATTER IN JUNE, AN EXAMINER
WAS APPOINTED TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF
EMPLOYEES IN CERTAIN NAMED CLASSIFICATIONS. THE EXAMINER'S REPORT,
DATED THE 19TH OF JULY 1968, WAS RELEASED TO THE PARTIES, FOLLOWING
WHICH A FURTHER HEARING WAS HELD IN ORDER TO ENTERTAIN THE REPRESENTATIONS
OF THE PARTIES WITH RESPECT TO THE CLASSIFICATIONS OF
EMPLOYEES STILL IN DISPUTE.

3. THE BOARD NOTES THAT THE PARTIES HAVE AGREED:

- (1) THAT DESIGN ENGINEERING ASSISTANTS, TECHNICIANS
1 AND THE SWITCHBOARD RECEPTIONIST ARE INCLUDED
IN ANY VOTING CONSTITUENCY AND/OR ANY APPROPRIATE
BARGAINING UNIT;
- (2) THAT THE SECRETARY TO THE PRODUCTION MANAGER
CARRIES OUT DUTIES WITH RESPECT TO LABOUR
RELATIONS AND SHOULD BE EXCLUDED FROM ANY
APPROPRIATE BARGAINING UNIT;
- (3) THAT B. PORTSMOUTH, SYSTEMS ANALYST, SHOULD
NOT BE INCLUDED IN THE BARGAINING UNIT BECAUSE
HE WAS NOT AN EMPLOYEE OF THE ST. CATHARINES
DIVISION OF THE RESPONDENT;
- (4) THAT T. R. JONES WAS NOT A METHODS MAN BUT A
CLERK ON THE DATE OF THE FILING OF THE APPLICATION
AND SHOULD THEREFORE BE INCLUDED IN ANY
VOTING CONSTITUENCY AND/OR ANY APPROPRIATE
BARGAINING UNIT;
- (5) THAT THE ONLY DIFFERENCES BETWEEN THE PARTIES
WITH RESPECT TO THE BARGAINING UNIT WERE THE
INCLUSION OR EXCLUSION OF THE ASSISTANT
SUPERVISOR, THE PLANT NURSE, FIVE TIME STUDY
MEN AND TWO METHODS MEN.

4. THE RESPONDENT SEEKS THE EXCLUSION OF THESE CLASSIFICATIONS ON THE GROUND THAT THE PERSONS IN QUESTION EXERCISE MANAGERIAL FUNCTIONS OR ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS OR BOTH. THE GENERAL CRITERIA APPLIED BY THE BOARD IN DEALING WITH PROBLEMS OF THIS KIND WERE SET OUT IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379. THESE CRITERIA HAVE BEEN REPEATED IN SUCCEEDING CASES ON A NUMBER OF OCCASIONS AND THERE IS NO NEED TO SET THEM OUT ONCE AGAIN. IN THE PRESENT CASE COUNSEL FOR THE RESPONDENT REFERRED, IN ADDITION, TO CERTAIN CRITERIA AND PRINCIPLES APPLIED BY WELLS J. [AS HE THEN WAS] IN RE CANADIAN GENERAL ELECTRIC COMPANY LIMITED, [1956] O.R. 437; (1956) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, PAR. 15,071, IN DEALING WITH METHODS MEN, RATE SETTERS AND MOTION TIME STUDY MEN. THAT DECISION WAS SUBSEQUENTLY REVERSED IN THE COURT OF APPEAL ON THE GROUND THAT THE COURT HAD NO JURISDICTION TO REVIEW THE DECISION OF THE ONTARIO LABOUR RELATIONS BOARD ON SUCH MATTERS. (SEE BRADLEY ET AL. AND CANADIAN GENERAL ELECTRIC COMPANY LIMITED AND ONTARIO LABOUR RELATIONS BOARD (1957) CCH CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER '55-'59, PAR. 15,118.) FOLLOWING THE DECISION OF WELLS J., SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT WAS AMENDED TO INSERT THE WORDS "IN THE OPINION OF THE BOARD". THE DECISION OF THE COURT OF APPEAL WAS BASED ON THE EARLIER SECTION WHICH DID NOT CONTAIN THOSE WORDS. COUNSEL FOR THE RESPONDENT TOOK THE POSITION THAT THE DECISION OF WELLS J. CONTAINED A LOGICAL ANALYSIS OF THE MATTERS IN QUESTION ALTHOUGH, ADMITTEDLY, NOT BINDING ON THE BOARD. THE DECISION IS ENTITLED TO THE HIGHEST RESPECT AND, INDEED, IS REFERRED TO IN THE FALCONBRIDGE CASE. IT MUST, HOWEVER, BE READ IN THE LIGHT OF THE VARIOUS CRITERIA SET OUT IN THE LAST MENTIONED CASE BECAUSE THESE CRITERIA HAVE BEEN APPLIED CONSISTENTLY BY THE BOARD IN MATTERS OF THIS KIND.

5. THE FIRST PERSON IN DISPUTE IS W. W. CAMPBELL, AN ASSISTANT SUPERVISOR IN THE DIRECT COST DEPARTMENT. THIS DEPARTMENT IS PRESIDED OVER BY A SUPERVISOR AND CONSISTS OF THE ASSISTANT SUPERVISOR, THREE COST AND THREE GENERAL CLERKS. THERE IS NO QUESTION THAT, NORMALLY, A PERSON IN THE POSITION OF MR. CAMPBELL WOULD BE INCLUDED IN THE BARGAINING UNIT BECAUSE SUCH A PERSON ORDINARILY ONLY EXERCISES LIMITED SUPERVISORY DUTIES IN THE ABSENCE OF THE SUPERVISOR. THE EVIDENCE IN THE PRESENT CASE, HOWEVER, REVEALS THAT THE ORGANIZATION OF THE DIRECT COST DEPARTMENT IS SUCH THAT THE SUPERVISOR, BECAUSE OF SPECIAL KNOWLEDGE AND SKILLS, DEVOTES A CONSIDERABLE PERIOD OF HIS TIME TO WORK IN A SPECIAL FIELD AND THAT HE SPENDS LESS TIME IN SUPERVISION THAN DOES HIS ASSISTANT, MR. CAMPBELL. WHILE MR. CAMPBELL WORKS, THE EVIDENCE IS THAT HE SPENDS MORE TIME IN SUPERVISION AND LAYING OUT WORK THAN IN ACTUALLY WORKING HIMSELF. MR. CAMPBELL ESTIMATED THAT HIS SUPERVISOR WAS AVAILABLE FOR SUPERVISORY PURPOSES ABOUT 40% OF HIS TOTAL TIME BUT THAT HE ACTUALLY SPENT ONLY ABOUT 30% OF HIS TOTAL TIME ON DIRECT SUPERVISION. IN ADDITION TO HIS

SUPERVISORY DUTIES, MR. CAMPBELL HAS INTERVIEWED APPLICANTS FOR EMPLOYMENT AND HAS MADE RECOMMENDATIONS WHICH RESULTED IN THE HIRING OF SOME OF THE PERSONS HE INTERVIEWED. HE HAS RECOMMENDED THE FIRING OF AN EMPLOYEE. HE REPORTS ON QUALIFICATIONS, EFFICIENCY AND CONDUCT OF EMPLOYEES IN THE DEPARTMENT AND HE HAS RECOMMENDED RE-CLASSIFICATION OF EMPLOYEES AND AN INCREASE IN SALARY, BOTH OF WHICH RECOMMENDATIONS WERE ACCEPTED. HE HAS AUTHORITY TO SEND PERSONS HOME IF THEY ARE ILL AND HE HAS AUTHORITY TO ALLOW PERSONNEL TO LEAVE EARLY, ALTHOUGH HE CANNOT GRANT TIME OFF FOR HALF A DAY OR MORE. MR. CAMPBELL HAS ALSO INITIATED OVERTIME ON A NUMBER OF OCCASIONS AND IN CIRCUMSTANCES SUCH THAT HIS SUPERVISOR WOULD NOT BE AWARE OF THE NEED FOR OVERTIME. MR. CAMPBELL ALSO ATTENDS MEETINGS OF MANAGEMENT PERSONNEL.

6. WHILE IT MAY BE THAT PART OF MR. CAMPBELL'S AUTHORITY AND DUTIES STEMS FROM THE FACT THAT HE IS TO SOME EXTENT BEING GIVEN TRAINING IN MANAGEMENT FUNCTIONS, IT SEEMS CLEAR FROM THE ABOVE FACTORS THAT IN THE CIRCUMSTANCES OF THIS CASE HE DOES EXERCISE MANAGERIAL FUNCTIONS WITHIN THE PRINCIPLES SET OUT IN THE FALCONBRIDGE CASE AND WE SO FIND.

7. WE TURN NOW TO THE PLANT NURSE, MRS. JOANN PIZZO. MRS. PIZZO IS IN REALITY EMPLOYED IN A DUAL CAPACITY. IN GENERAL SHE IS CONCERNED WITH THE FIRST AID OR HEALTH PROBLEMS THAT THE PLANT, OFFICE AND TECHNICAL STAFF MAY HAVE. HER IMMEDIATE SUPERVISOR IS THE PERSONNEL MANAGER. IN HER CAPACITY AS PLANT NURSE WE DO NOT FIND THAT HER DUTIES ARE SUCH AS WOULD EXCLUDE HER EITHER ON THE GROUND THAT SHE EXERCISES MANAGERIAL FUNCTIONS OR BECAUSE SHE IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

8. HOWEVER, MRS. PIZZO SPENDS ABOUT 25% OF HER TIME IN THE PERSONNEL OFFICE CARRYING OUT PERSONNEL WORK AS DIRECTED BY THE SECRETARY TO THE PERSONNEL MANAGER. AT THE PRESENT TIME THERE ARE ONLY TWO FULL TIME PERSONS IN THE PERSONNEL DEPARTMENT, THE PERSONNEL MANAGER AND HIS SECRETARY, AND IT WOULD APPEAR THAT MRS. PIZZO IS CALLED IN WHEN THE WORK LOAD DEMANDS IT. SHE HAS ACCESS TO ALL FILES THAT THE SECRETARY HAS ACCESS TO. IT IS A FAIR INFERENCE FROM THE EVIDENCE THAT SHE HAS COPIED, TYPED OR ZEROXED DOCUMENTS RELATING TO THE RESPONDENT'S NEGOTIATIONS WITH UNIONS REPRESENTING THE COMPANY'S EMPLOYEES AND OTHER DOCUMENTS COVERING THE COMPANY'S RELATIONS WITH SUCH UNIONS. SHE WAS TOLD WHEN SHE STARTED WORKING IN THE PERSONNEL DEPARTMENT THAT ANYTHING SHE SAW OR HEARD IN THAT OFFICE WAS CONFIDENTIAL.

9. HAVING REGARD TO THE AMOUNT OF TIME WHICH MRS. PIZZO SPENDS IN THE PERSONNEL OFFICE, IT IS CLEAR THAT HER DUTIES THERE MUST BE REGARDED AS SOMETHING MORE THAN MERELY INCIDENTAL TO HER MAIN DUTIES AS A PLANT NURSE. WHILE EMPLOYED IN THE PERSONNEL OFFICE SHE HAS ACCESS TO AND WORKS WITH THE RESPONDENT COMPANY'S DOCUMENTS DEALING WITH LABOUR RELATIONS MATTERS AND POLICIES.

IN THESE CIRCUMSTANCES, WE THEREFORE FIND THAT MRS. JOANN PIZZO IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS DEALING WITH LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3))B) OF THE LABOUR RELATIONS ACT.

10. THERE REMAINS FOR CONSIDERATION THE POSITION OF THE TIME STUDY MEN AND METHODS MEN. THE PARTIES AGREED THAT IT WAS NECESSARY TO EXAMINE ONLY ONE EMPLOYEE IN EACH CATEGORY. THE EMPLOYEES IN THE TWO CATEGORIES ARE AT PRESENT INCLUDED IN THE BARGAINING UNIT REPRESENTED BY THE INTERVENER. THIS BARGAINING UNIT CONSISTS IN THE MAIN OF OFFICE AND TECHNICAL EMPLOYEES. THE APPLICANT TRADE UNION REPRESENTS THE PRODUCTION EMPLOYEES AND THE DRAFTSMEN'S ASSOCIATION OF ONTARIO LOCAL 164 REPRESENTS DRAFTSMEN. THE INTERVENER'S COLLECTIVE AGREEMENT WITH THE RESPONDENT EXCEPTS SUPERVISORS AND EMPLOYEES "EXEMPTED ON THE BASIS OF THE CONFIDENTIAL NATURE OF THEIR JOB". THERE IS NO SUGGESTION THAT THE TIME STUDY AND METHODS MEN EXERCISE MANAGERIAL FUNCTIONS. THE RESPONDENT'S POSITION IS THAT THE WORK OF THE TIME STUDY AND METHODS MEN CONCERNS THE PRODUCTION EMPLOYEES AND SO LONG AS THESE TWO CLASSIFICATIONS WERE REPRESENTED BY A DIFFERENT UNION, THAT IS, THE INTERVENER, THERE WAS NO PROBLEM. THE RESPONDENT ARGUES, HOWEVER, THAT NOW THAT THEY MAY BE REPRESENTED BY THE APPLICANT, A CONFLICT OF INTEREST WILL ARISE BECAUSE THEIR WORK WILL ULTIMATELY HAVE A BEARING ON THE AMOUNT OF PAY THAT SOME OF THE EMPLOYEES IN THE PRODUCTION UNIT WILL RECEIVE.

11. THE CONFLICT OF INTEREST PRINCIPLE IS, OF COURSE, ONE OF THE REASONS THAT THE ACT PROVIDES FOR THE EXCLUSION OF PERSONS EXERCISING MANAGERIAL FUNCTIONS AND PERSONS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. IT HAS BEEN A WELL-ESTABLISHED POLICY OF THE BOARD FOR MANY YEARS THAT THE SAME UNION IS ENTITLED TO REPRESENT BOTH PRODUCTION AND OFFICE WORKERS, ALBEIT IN SEPARATE BARGAINING UNITS. WE DO NOT ACCEPT THE ARGUMENT OF THE RESPONDENT THAT A CONFLICT OF INTEREST ARISES SIMPLY BECAUSE THE SAME UNION MAY IN THE FUTURE REPRESENT BOTH THE PRODUCTION AND OFFICE WORKERS OF THE RESPONDENT. PUT ANOTHER WAY, IF THERE IS A CONFLICT OF INTEREST SITUATION, WE DO NOT AGREE THAT THE FACT THAT THE TIME STUDY MEN AND THE METHODS MEN BELONG TO A DIFFERENT UNION FROM THE PRODUCTION WORKERS WILL RESOLVE THAT CONFLICT. IN OUR VIEW, THEREFORE, THE ONLY GROUND ON WHICH THE TIME STUDY AND METHODS MEN COULD BE EXCLUDED IS BECAUSE THEY ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS. OBVIOUSLY THE RESPONDENT DID NOT BELIEVE THIS TO BE THE CASE WHEN SIGNING THE COLLECTIVE AGREEMENT WITH THE INTERVENER, AND THERE IS A HEAVY ONUS ON IT TO ESTABLISH THAT POSITION AT THE PRESENT TIME, PARTICULARLY IN VIEW OF THE FACT THAT THERE IS NO SUGGESTION THAT THE DUTIES AND RESPONSIBILITIES OF THE EMPLOYEES IN QUESTION HAVE CHANGED SINCE THAT COLLECTIVE AGREEMENT WAS SIGNED.

12. AFTER CONSIDERING THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES AND HAVING REGARD TO THE PRINCIPLES ENUNCIATED IN THE FALCONBRIDGE CASE, SUPRA, WE ARE UNABLE TO CONCLUDE THAT THE TIME STUDY AND METHODS MEN INVOLVED IN THIS CASE EXERCISE THAT DEGREE OF INDEPENDENT DECISION MAKING AND DISCRETION WHICH IS ENVISAGED IN THE FALCONBRIDGE CASE. THEY ARE UNDOUBTEDLY HIGHLY SKILLED TECHNICIANS WHO MAKE RECOMMENDATIONS BUT, IN THE FINAL ANALYSIS, IT IS SOMEONE ELSE - SOME HIGHER AUTHORITY - WHICH MAKES THE ULTIMATE DECISION. FURTHERMORE, ON THE EVIDENCE IT SEEMS CLEAR THAT THEY DO NOT PARTICIPATE IN THE GRIEVANCE PROCEDURE ON BEHALF OF MANAGEMENT, BUT RATHER ARE THERE IN THE NEUTRAL CAPACITY OF SUPPLYING FACTS. THEY DO NOT HAVE THE DISCRETION OR AUTHORITY OF THE TIME STUDY TECHNICIANS DESCRIBED IN THE CANADIAN ACME SCREW AND GEAR LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 872. IN THE RESULT, THEREFORE, WE FIND THAT THE TIME STUDY MEN AND THE METHODS MEN ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE VOTING CONSTITUENCY AND/OR APPROPRIATE BARGAINING UNIT.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY AT THE TIME THE APPLICATION WAS MADE WERE MEMBERS OF THE APPLICANT ON MAY 28TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. HAVING REGARD TO THE FINDINGS SET OUT ABOVE AND TO THE AGREEMENT OF THE PARTIES BOTH AT THE HEARINGS IN THIS CASE AND AS NOTED IN PARAGRAPH 3, THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE FOLLOWING VOTING CONSTITUENCY:

ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ASSISTANT SUPERVISOR DIRECT COST DEPARTMENT, ONE SECRETARY TO EACH OF THE VICE-PRESIDENT AND GENERAL MANAGER, INDUSTRIAL RELATIONS MANAGER AND PRODUCTION MANAGER, PLANT NURSE, OFFICE CLEANING STAFF, PLANT SECURITY, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE TRAINING BASIS AND PERSONS BOUND BY THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE DRAFTSMEN'S ASSOCIATION OF ONTARIO LOCAL 164 A.F.T.E., AFL-CIO FERRANTI PACKARD BRANCH AND BETWEEN THE RESPONDENT AND UNITED STEELWORKERS OF AMERICA, LOCAL 5788.

THE BOARD HAS NOT DEEMED IT NECESSARY TO INCLUDE AMONG THE EXCEPTIONS PROFESSIONAL ENGINEERS SINCE THEY ARE EXCLUDED, IN ANY EVENT, UNDER THE PROVISIONS OF SECTION 1(3) (A) OF THE LABOUR RELATIONS ACT.

15. IF, FOLLOWING THE REPRESENTATION VOTE DIRECTED ABOVE THE APPLICANT IS FOUND BY THE BOARD TO BE ENTITLED TO CERTIFICATION, THE BOARD PROPOSES, SUBJECT TO ANY REPRESENTATIONS FROM THE PARTIES, TO DESCRIBE THE BARGAINING UNIT IN THE SAME TERMS AS THE VOTING CONSTITUENCY AS SET OUT ABOVE.

16. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

17. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

18. THE MATTER IS REFERRED TO THE REGISTRAR.

14652-68-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. SCARBOROUGH CENTENARY HOSPITAL ASSOCIATION (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: JEAN-JACQUE BLAIS, PATRICK MURPHY, EDWARD RAYCROFT FOR THE APPLICANT, AND T. F. STORIE, B. VARTY, M. LEVIS FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 19, 1968.

1. BY A DECISION DATED JUNE 21ST, 1968, THE BOARD DECIDED THAT A REPRESENTATION VOTE BE HELD IN THIS MATTER. IN ACCORDANCE WITH THE REGISTRAR'S INSTRUCTIONS REGARDING A VOTE, THE PARTIES MET TO MAKE ARRANGEMENTS FOR THE VOTE.

2. IN A LETTER DATED JUNE 28TH, 1968, SIGNED JOINTLY BY V. W. VARTY, ASSISTANT ADMINISTRATOR, ON BEHALF OF THE HOSPITAL, AND G. P. MURPHY, PRESIDENT, ON BEHALF OF THE UNION, THE PARTIES ADVISED THE BOARD THAT THEY HAD AGREED UPON THE ARRANGEMENTS FOR THE TAKING OF THE VOTE AND PROPOSED EITHER TUESDAY, JULY 9TH, OR TUESDAY, JULY 16TH, AS ALTERNATIVE DATES ACCEPTABLE TO BOTH FOR THE TAKING OF THE VOTE.

3. THE VOTE WAS HELD ON JULY 9TH, 1968. THE FOLLOWING SIX PERSONS WHOSE NAMES WERE NOT ON THE VOTERS' LIST WERE PERMITTED TO VOTE, AND THEIR BALLOTS WERE SEGREGATED: L. COWARD, M. RAMSAY, DORIS SCOTT, MARY WYLIE, GEORGE MULLIN, AND FLORENCE SCHRICKER. INCLUDING THESE SIX, THERE WAS A TOTAL OF 170 BALLOTS CAST. THERE WERE 280 PERSONS ON THE LISTS AT THE START OF THE VOTE. THE REVISED VOTERS' LIST COMPRISED 210 PERSONS. OF THESE REMOVED FROM THE LIST AS IT STOOD AT THE START OF THE VOTE, 57 WERE REMOVED PURSUANT TO SECTION 7(4) OF THE ACT. THERE WERE 14 REMOVED ON CONSENT OF THE PARTIES BY REASON OF TERMINATION OF EMPLOYMENT. ONE PERSON WAS ADDED TO THE LIST. THE BOX WAS SEALED FOLLOWING THE VOTE.
4. THE PARTIES EACH MADE WRITTEN REPRESENTATIONS TO THE BOARD FOLLOWING RECEIPT OF THE REPORT OF THE RETURNING OFFICER. BOTH LETTERS ARE DATED JULY 12TH, 1968. THE UNION'S LETTER SUBMITTED THAT THE PERSONS WHOSE BALLOTS WERE SEGREGATED WERE ELIGIBLE TO VOTE AND THAT THEIR BALLOTS SHOULD BE COUNTED. THE RESPONDENT IN ITS LETTER OF JULY 12TH AGREED THAT THE SIX PERSONS WERE ELIGIBLE TO VOTE AND SHOULD HAVE BEEN ON THE LIST OF ELIGIBLE VOTERS, AND THAT THEIR BALLOTS SHOULD BE COUNTED.
5. THE RESPONDENT ALSO REQUESTED THAT IN VIEW OF THE FACT THAT 57 PERSONS, REPRESENTING APPROXIMATELY 20 PER CENT OF THE ELIGIBLE VOTERS HAD BEEN ABSENT ON THE DATE OF THE VOTE DUE TO VACATIONS, DAYS-OFF AND ILLNESS THAT A SECOND DAY OF VOTING BE HELD TO PERMIT THESE PEOPLE AN OPPORTUNITY TO VOTE.
6. IN SUPPORT OF ITS CONTENTION THE RESPONDENT ALLEGED THAT ITS AGREEMENT EVIDENCED IN THE JOINT LETTER OF JUNE 28TH, TO A SINGLE DAY FOR VOTING AROSE OUT OF A MISUNDERSTANDING WITH RESPECT TO SUCH MATTERS AND THAT SUCH MISUNDERSTANDING WAS CONTRIBUTED TO BY MR. MURPHY ACTING FOR THE APPLICANT. THE RESPONDENT HOWEVER, SPECIFICALLY STATED THAT IT WAS NOT ALLEGING ANY MISCONDUCT ON THE PART OF MR. MURPHY. EVIDENCE WAS ADDUCED BY BOTH PARTIES TO WHAT TRANSPIRED AT THE MEETING AT WHICH THE VOTE ARRANGEMENTS WERE MADE.
7. THE EVIDENCE INDICATES THAT THE HOSPITAL SUGGESTED THAT AN ARRANGEMENT BE MADE FOR EITHER AN ADVANCE POLL OR A DEFERRED POLL IN ORDER TO TAKE CARE OF PERSONS WHO MIGHT OTHERWISE BE UNABLE TO VOTE. THE UNION TOOK STRONG OBJECTION TO THIS. IN FACT, THE HOSPITAL STATED THAT MR. MURPHY SAID IT WOULD BE ILLEGAL. MR. MURPHY ADMITS THAT HE MAY HAVE USED THE WORDS "LEGAL" OR "ILLEGAL" DURING THE DISCUSSION. IN ANY EVENT IT WAS AGREED THAT MURPHY WOULD CALL THE REGISTRAR OF THE ONTARIO LABOUR RELATIONS BOARD ON THE QUESTION. THIS HE DID IN THE PRESENCE OF THE HOSPITAL REPRESENTATIVES. IT WOULD APPEAR THAT FOLLOWING THE TELEPHONE CALL TO THE REGISTRAR THE DISCUSSION TURNED TO THE QUESTION OF ELECTIONEERING. MURPHY

SAID THAT THE REGISTRAR HAD SAID HE WOULD BE PROHIBITED FROM ELECTIONEERING BETWEEN ANY TWO VOTING DATES IN ADDITION TO 72 HOURS BEFORE THE FIRST VOTE. MURPHY, FOR HIS OWN REASONS, FELT THAT THIS WOULD BE AN ADVANTAGE TO THE HOSPITAL AND A DISADVANTAGE TO HIMSELF, AND THEREFORE STRENUOUSLY OBJECTED TO HAVING TWO VOTING DAYS. VARTY, THE HOSPITAL'S WITNESS STATED THAT MURPHY, AFTER THE CONVERSATION WITH THE REGISTRAR, SAID THAT ELECTIONEERING WOULD BE ILLEGAL. VARTY TESTIFIED THAT AS A RESULT OF THIS CONVERSATION HE WAS CONFUSED AS TO WHETHER A VOTE ON TWO DIFFERENT DAYS WAS PERMISSABLE OR NOT. NOTWITHSTANDING ANY DOUBT HE MAY HAVE HAD, HOWEVER, HE SIGNED THE JOINT LETTER AGREEING TO THE ALTERNATE DATES FOR A ONE-DAY VOTE.

8. IT SHOULD BE OBSERVED THAT THERE IS NO OBLIGATION UPON THE PARTIES TO SIGN A JOINT LETTER OF AGREEMENT. THIS IS PERMITTED UNDER PARAGRAPH 3 OF THE REGISTRAR'S INSTRUCTIONS REGARDING A VOTE AND IS FAR FROM MANDATORY. MR. VARTY HAD A COPY OF THESE INSTRUCTIONS IN WHICH PARAGRAPH 3 IS SET OUT IN BOLD TYPE AS FOLLOWS:

EACH PARTY WILL INFORM THE REGISTRAR IMMEDIATELY OF THE ARRANGEMENTS MADE AT THIS MEETING GIVING THE REASONS FOR ANY CHANGES MADE TO THE VOTERS' LIST, MAKING SUBMISSIONS AS TO ANY CHALLENGES MADE BY IT OR ANY OTHER PARTY, AND GIVING THE REASONS FOR THE FAILURE, IF ANY, OF THE PARTIES TO AGREE UPON ANY OF THE ARRANGEMENTS. THE EMPLOYER WILL FORWARD ALL FOUR APPROVED AND SIGNED COPIES OF THE VOTERS' LIST ALONG WITH HIS SUBMISSIONS, IF ANY. IF THE PARTIES SO DESIRE THEY MAY SUBMIT A JOINT LETTER BEARING THE SIGNATURES OF THE REPRESENTATIVES OF ALL PARTIES WITH RESPECT TO THE ARRANGEMENTS.

9. IT WAS PLAINLY OPEN TO THE RESPONDENT TO RECORD WITH THE REGISTRAR ANY DISAGREEMENT HAD HE FELT SUFFICIENTLY STRONGLY ABOUT THE SITUATION. HE, OF COURSE, MADE NO ATTEMPT TO BRING THE QUESTION TO THE ATTENTION OF THE REGISTRAR AS HE WAS INVITED TO DO IN THE INSTRUCTIONS, AND MUST ACCEPT THE RESPONSIBILITY FOR ELECTING TO SIGN THE JOINT AGREEMENT. WE SEE NO REASON TO SET A NEW DATE OR A FURTHER DATE FOR VOTING ON THIS GROUND ALONE.

10. THERE WAS NO EVIDENCE AT THE HEARING PURPORTING TO SHOW HOW MANY, IF ANY, EMPLOYEES WERE ACTUALLY DEPRIVED OF AN OPPORTUNITY TO VOTE BY REASON OF VACATION OR OTHER FORESEEABLE ABSENCE. THERE IS EVIDENCE THAT SOME EMPLOYEES WHO WERE NOT SCHEDULED TO WORK DID IN FACT COME IN TO VOTE AND DID CAST THEIR BALLOTS. THERE IS, OF COURSE, NO WAY OF TELLING HOW MANY

OF THE EMPLOYEES WHO WERE ABSENT FROM WORK COULD HAVE COME IN BUT DELIBERATELY ABSTAINED FROM VOTING AS DID SOME FORTY EMPLOYEES WHO WERE AT WORK AND WERE ELIGIBLE TO VOTE.

11. WHATEVER MAY HAVE BEEN THE CASE WITH RESPECT TO THE TWENTY PER CENT WHO WERE ABSENT IT IS CLEAR THAT APPROXIMATELY EIGHTY PER CENT OF THE ELECTORATE HAD FULL OPPORTUNITY TO EXPRESS THEIR OPINION THROUGH THE BALLOT BOX. THERE HAS BEEN NO PROTEST OR REPRESENTATION OF ANY KIND MADE WITH RESPECT TO THE ARRANGEMENTS FOR AND THE CONDUCTING OF THE BALLOT BY ANY OF THE EMPLOYEES CONCERNED ALTHOUGH THE NOTICE OF THE REPORT OF THE RETURNING OFFICER INDICATES THE MANNER IN WHICH ANYONE SO DESIRING MAY MAKE REPRESENTATIONS WITH RESPECT TO THE VOTE.

12. IN VIEW OF ALL THE EVIDENCE AND THE CIRCUMSTANCES OF THIS CASE, AND IN PARTICULAR THE ABSENCE OF PROTEST ON THE PART OF THE EMPLOYEES, THE BOARD DECLINES TO GRANT THE REQUEST OF THE RESPONDENT. THE REGISTRAR IS THEREFORE DIRECTED TO CAUSE THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE, INCLUDING THE SEGREGATED BALLOTS OF L. COWARD, M. RAMSAY, DORIS SCOTT, MARY WYLIE, GEORGE MULLIN AND FLORENCE SCHRICKER, TO BE COUNTED AND TO REPORT THEREON TO THE BOARD.

14709-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 183 (APPLICANT) v. KNIGHT SECURITY GUARDS LIMITED
(RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: R. KOSKIE, M. REILLY AND D. FLETCHER FOR THE APPLICANT, E. T. McDERMOTT, A. E. CARR AND A. SIM FOR THE RESPONDENT.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER H. F. IRWIN: SEPTEMBER 17, 1968.

1. THE APPLICANT HAS APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AS SECURITY GUARDS" WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. THE RESPONDENT CARRIES ON THE BUSINESS OF PROVIDING SECURITY GUARD SERVICE FOR OTHER PERSONS. THE RESPONDENT EMPLOYS PERSONS WHO ACT AS SECURITY GUARDS TO PROTECT THE PROPERTY OF THE PERSONS WITH WHOM THE RESPONDENT HAS CONTRACTED TO PROVIDE SUCH SERVICES. IT THEREFORE CANNOT BE SAID THAT A SECURITY GUARD EMPLOYED BY THE RESPONDENT IS

"EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF HIS EMPLOYER" WITHIN THE MEANING OF SECTION 9 OF THE LABOUR RELATIONS ACT, UNLESS IT IS FOUND THAT A PROPERTY INTEREST IS VESTED IN THE RESPONDENT AS A RESULT OF THE CONTRACTUAL RELATIONSHIP ENTERED INTO BETWEEN THE RESPONDENT AND ITS CUSTOMERS WHOSE PROPERTY IS BEING GUARDED. SINCE THE FORM OF CONTRACT ENTERED INTO BETWEEN THE RESPONDENT AND ITS CUSTOMERS WAS NOT INTRODUCED IN EVIDENCE IN THIS MATTER, THE BOARD IS NOT PREPARED TO MAKE AN ASSUMPTION THAT THE PROPERTY IS VESTED IN THE RESPONDENT.

2. THE APPLICANT IS A TRADE UNION WHICH ADMITS TO MEMBERSHIP PERSONS OTHER THAN GUARDS. IT IS POSSIBLE THAT THE APPLICANT MAY REPRESENT EMPLOYEES OF CUSTOMERS OF THE RESPONDENT WHOSE PROPERTY IS BEING GUARDED BY THE RESPONDENT'S SECURITY GUARDS.

3. IT WAS ADMITTED AT THE HEARING THAT THE RESPONDENT'S SECURITY GUARDS PERFORM THE SAME FUNCTIONS WITH RESPECT TO THE PROPERTY BEING GUARDED, AS WOULD NORMALLY BE PERFORMED BY GUARDS WHO ARE EMPLOYED TO PROTECT THE PROPERTY OF THEIR EMPLOYER WITHIN THE MEANING OF SECTION 9 OF THE ACT. IT WAS ALSO AGREED THAT IF THE PERSONS WITH WHOM WE ARE HERE CONCERNED WERE EMPLOYED, NOT BY THE RESPONDENT BUT BY THE OWNER OF THE PROPERTY WITH RESPECT TO WHICH THEY PERFORM THEIR GUARDING FUNCTIONS, THE APPLICANT WOULD BE PRECLUDED FROM REPRESENTING THEM BY SECTION 9 OF THE ACT.

4. IT WAS THE APPLICANT'S POSITION THAT IT WAS ENTITLED TO BE CERTIFIED AS BARGAINING AGENT FOR THE RESPONDENT'S SECURITY GUARDS SINCE THE RESPONDENT'S GUARDS WERE NOT EMPLOYED TO PROTECT THE PROPERTY OF THEIR EMPLOYER. THE APPLICANT ARGUED THAT SECTION 9 OF THE ACT ONLY REFERS TO GUARDS WHO ARE EMPLOYED TO PROTECT THE PROPERTY OF THEIR EMPLOYER AND ACCORDINGLY ANY OTHER GUARDS ARE ELIGIBLE TO BE REPRESENTED BY THE APPLICANT.

5. THE RESPONDENT ARGUED THAT IF THE MISCHIEF RULE OF STATUTORY INTERPRETATION WERE TO BE APPLIED TO SECTION 9, THE BOARD WOULD HAVE NO JURISDICTION TO CERTIFY THE APPLICANT SINCE THE APPLICANT TAKES INTO MEMBERSHIP PERSONS OTHER THAN SECURITY GUARDS.

6. THE PREDECESSOR OF SECTION 9 OF THE ACT FIRST APPEARED AS SECTION 8 IN THE 1950 REVISION OF THE LABOUR RELATIONS ACT. PRIOR TO 1950, SINCE THERE IS NO STATUTORY REFERENCE TO GUARDS IN THE ACT, THE BOARD DEALT WITH THE MATTER OF GUARDS AS A BARGAINING UNIT PROBLEM. APPARENTLY, UNLESS THE MATTER WAS RAISED, THE TERM "ALL EMPLOYEES" HAD IN MANY INSTANCES INCLUDED GUARDS. THE EFFECT OF THE RELEVANT SECTION WAS NOT TO DENY COVERAGE UNDER THE LABOUR RELATIONS ACT TO EMPLOYEES WHO WERE EMPLOYED AS GUARDS, BUT RATHER TO ISOLATE THEM FROM OTHER EMPLOYEES WITH RESPECT TO COLLECTIVE BARGAINING AND BARGAINING AGENTS.

7. THE SECTION DEALING WITH SECURITY GUARDS WHICH WAS FIRST INTRODUCED IN 1950 READS AS FOLLOWS:

SECURITY GUARDS 8. THE BOARD SHALL NOT INCLUDE IN A BARGAINING UNIT WITH OTHER EMPLOYEES ANY PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF HIS EMPLOYER AND NO TRADE UNION SHALL BE CERTIFIED AS BARGAINING AGENT FOR A BARGAINING UNIT OF SUCH GUARDS IF IT ADMITS TO MEMBERSHIP OR IS CHARTERED BY, OR IS AFFILIATED, DIRECTLY OR INDIRECTLY, WITH AN ORGANIZATION THAT ADMITS TO MEMBERSHIP PERSONS OTHER THAN SUCH GUARDS.
R.S.O. 1950, c. 194, s. 8.

8. IN 1954 s. 8 OF R.S.O. 1950 c. 194 WAS AMENDED BY S.O. 1954 c. 42 s. 3. THIS IS THE PRESENT FORM OF THE SECTION. THE AMENDMENT INTRODUCED THE RULE THAT AN EMPLOYER COULD NOT BE FORCED TO BARGAIN IN A SITUATION PROHIBITED BY THE THEN S. 8. AT THE SAME TIME, S. 25(2) OF THE SAME AMENDING ACT, MODIFIED S. 68(2) (THE PRECURSOR TO THE PRESENT S. 79(2)) TO ALLOW THE BOARD TO DETERMINE WHETHER AN EMPLOYEE IS A GUARD. THUS

S. 68 (2) IF IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT, OR IF DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT, ANY QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON SHALL BE FINAL AND CONCLUSIVE FOR ALL PURPOSES.
R.S.O. 1950, c. 194, s. 68.

WAS AMENDED TO READ

S. 68 (2) IF IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT, OR IF DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT, ANY QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON SHALL BE FINAL AND CONCLUSIVE FOR ALL PURPOSES.
R.S.O. 1950, c. 194, s. 68(2); 1954, c. 42 s. 25(2).

IT IS TO BE NOTED THAT THE TERM GUARD IS NOT QUALIFIED BY THE WORDS "EMPLOYED TO PROTECT THE PROPERTY OF HIS EMPLOYER".

9. AS STATED ABOVE, THE AMENDED SECTION 8 IS IN THE SAME FORM AS THE CURRENT SECTION 9 OF THE ACT WHICH READS AS FOLLOWS:

SECURITY
GUARDS

9. THE BOARD SHALL NOT INCLUDE IN A BARGAINING UNIT WITH OTHER EMPLOYEES A PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF HIS EMPLOYER AND NO TRADE UNION SHALL BE CERTIFIED AS BARGAINING AGENT FOR A BARGAINING UNIT OF SUCH GUARDS AND NO EMPLOYER OR EMPLOYERS' ORGANIZATION SHALL BE REQUIRED TO BARGAIN WITH A TRADE UNION ON BEHALF OF ANY PERSON EMPLOYED AS A GUARD IF, IN EITHER CASE, THE TRADE UNION ADMITS TO MEMBERSHIP OR IS CHARTERED BY, OR IS AFFILIATED, DIRECTLY OR INDIRECTLY, WITH AN ORGANIZATION THAT ADMITS TO MEMBERSHIP PERSONS OTHER THAN SUCH GUARDS.
R.S.O. 1960, c. 202, s. 9.

10. WHEN THE STRUCTURE OF THE PRESENT SECTION 9 IS ANALYSED IT MAY BE SET FORTH AS FOLLOWS:

(A) (I) THE BOARD SHALL NOT INCLUDE IN A BARGAINING UNIT WITH OTHER EMPLOYEES A PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF HIS EMPLOYER.

AND

(II) NO TRADE UNION SHALL BE CERTIFIED AS BARGAINING AGENT FOR A BARGAINING UNIT OF SUCH GUARDS.

AND

(B) NO EMPLOYER OR EMPLOYERS' ORGANIZATION SHALL BE REQUIRED TO BARGAIN WITH A TRADE UNION ON BEHALF OF ANY PERSON EMPLOYED AS A GUARD

IF, IN EITHER CASE,

THE TRADE UNION

(A) ADMITS TO MEMBERSHIP

OR

(B) IS CHARTERED BY, OR IS AFFILIATED, DIRECTLY OR INDIRECTLY, WITH AN ORGANIZATION THAT ADMITS TO MEMBERSHIP

PERSONS OTHER THAN SUCH GUARDS.

11. AS MAY BE SEEN ABOVE, SECTION 9 MAY BE BROKEN DOWN IN PARTS A AND B. PART B, INCLUDING THE WORDS IN EITHER CASE, WERE ADDED TO THE SECTION IN 1954. IT IS TO BE NOTED THAT THE WORD GUARD IN PART B SET OUT ABOVE IS NOT QUALIFIED BY THE WORD SUCH AS IN A(11) ABOVE OR BY THE WORDS TO PROTECT THE PROPERTY OF HIS EMPLOYER AS IN A(1).

12. WE NOW SHOULD CONSIDER THE IMPLICATION OF THE WORDS EITHER CASE AS USED IN SECTION 9. THE WORD EITHER DENOTES THE CHOICE OF ONE OR THE OTHER OR ONE OF TWO. SINCE PARTS A AND B IN REALITY DEAL WITH THREE FACTUAL SITUATIONS, THE TERM EITHER CASE CANNOT THEREFORE REFER TO THE FACTUAL SITUATIONS. ON THE OTHER HAND, THE TERM GUARD AS USED IN PART A(1) IS MODIFIED BY THE WORDS TO PROTECT THE PROPERTY OF HIS EMPLOYER AND AGAIN IN PART A(11), THE TERM GUARDS IS MODIFIED BY THE WORD SUCH WHICH RELATES BACK TO THE WORDS TO PROTECT THE PROPERTY OF HIS EMPLOYER. IN PART B SET OUT ABOVE NO QUALIFICATION IS USED WITH RESPECT TO THE TERM GUARD. IT THEREFORE FOLLOWS THAT THE TERM EITHER CASE REFERS TO THE TWO TYPES OF GUARDS, I.E., GUARDS WHO ARE EMPLOYED TO PROTECT THE PROPERTY OF THEIR EMPLOYER AND GUARDS WITHOUT SUCH QUALIFICATION.

13. IF SECTION 9 SPEAKS OF TWO TYPES OF GUARDS AS WOULD APPEAR FROM THE ANALYSIS OF THE SECTION SET OUT ABOVE, THE BOARD CAN GIVE FULL EFFECT TO THE WORDS OF THE SECTION WHICH WOULD BE IN ACCORD WITH THE MISCHIEF RULE OF STATUTORY INTERPRETATION AND WOULD BE COMPELLED TO FIND THAT THE APPLICANT IN THIS CASE IS NOT ENTITLED TO REPRESENT THE RESPONDENT'S EMPLOYEES.

14. WHILE IT MAY BE ARGUED THAT SECTION 9 IS OPEN TO ANOTHER INTERPRETATION, ANY OTHER INTERPRETATION WOULD NOT GIVE EFFECT TO ALL THE WORDS USED AND THE MANNER IN WHICH THEY ARE USED IN THE SECTION. IF THE ONLY TYPE OF GUARD REFERRED TO IN SECTION 9 WAS A GUARD EMPLOYED TO PROTECT THE PROPERTY OF HIS EMPLOYER, THE ADDITIONAL WORDS ADDED IN 1954 TO THE SECTION WOULD BE REDUNDANT SINCE THEY WOULD NOT COVER ANY SITUATION WHICH HAD NOT ALREADY BEEN COVERED EXPLICITLY OR IMPLICITLY IN THE ORIGINAL WORDING OF SECTION 8 OF THE ACT.

15. THE BOARD THEREFORE FINDS THAT IN ORDER TO GIVE FULL EFFECT TO THE WORDS USED IN SECTION 9, WE ARE OF OPINION THAT THE UNQUALIFIED TERM GUARD AS USED IN THE LATTER PART OF THE SECTION REFERS TO THE TYPE OF GUARD EMPLOYED BY THE RESPONDENT IN THIS CASE AND WE THEREFORE FIND THAT, SINCE THE APPLICANT ADMITS TO MEMBERSHIP PERSONS OTHER THAN GUARDS, THE APPLICANT IS PRECLUDED BY THE OPERATION OF SECTION 9 TO REPRESENT THE EMPLOYEES OF THE RESPONDENT IN THIS CASE.

16. THE APPLICATION IS THEREFORE DISMISSED.

DECISION OF BOARD MEMBER O. HODGES:

SEPTEMBER 17, 1968.

1. I DISSENT FROM THE MAJORITY DECISION. I WOULD HAVE GRANTED CERTIFICATION TO THE APPLICANT TO REPRESENT THE EMPLOYEES OF THE RESPONDENT EMPLOYED AS SECURITY GUARDS.

2. THE PROBLEM IN THE INSTANT CASE IS WHETHER SECTION 9 OF THE ACT EXCLUDES GUARDS OTHER THAN "ANY PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF HIS EMPLOYER". IN THE GEORGE A CRAIN & SONS LIMITED CASE, 1963 C.L.L.C., PARAGRAPH 16,291, THE BOARD RENDERED AN ERUDITE DECISION ON THE STATUS OF "WATCHMEN", AND WHETHER THEY WERE "GUARDS". THE DEFINITION OF "GUARDS" IN THAT CASE LEAVES NO DOUBT THAT THERE IS BUT ONE MEANING TO BE TAKEN FROM SECTION 9 - A "GUARD" IS A PERSON EMPLOYED TO PROTECT THE PROPERTY OF HIS EMPLOYER. (EMPHASIS ADDED).

3. IN DEFINING "GUARDS" IN THAT CASE, THE BOARD SAID:

[GUARD DEFINED]

THE PLAIN AND UNAMBIGUOUS LANGUAGE OF THE SECTION STIPULATES TWO INDISPENSABLE CONDITIONS PRECEDENT TO ITS OPERATION, NAMELY, (1) THAT THE EMPLOYEE BE "A PERSON EMPLOYED AS A GUARD" AND (2) THAT HE BE EMPLOYED AS SUCH "TO PROTECT THE PROPERTY OF HIS EMPLOYER". IN OTHER WORDS, THE SECTION IS ONLY INTENDED TO AFFECT A PERSON WHO GIVES TO THE PROPERTY OF HIS EMPLOYER THE TYPE OF PROTECTION PROVIDED BY A "GUARD". ON THE OTHER HAND, IT IS MANIFEST THAT THE SECTION DOES NOT MAKE EVERY EMPLOYEE WHOSE CONTRACT OF HIRING REQUIRES HIM TO PROTECT THE PROPERTY OF HIS EMPLOYER A "GUARD". WHILE THERE IS NO DOUBT, FROM THE LANGUAGE OF THE ENACTMENT ITSELF, THAT THE SECTION IS ONLY APPLICABLE TO A GUARD EMPLOYED TO PROTECT THE PROPERTY OF HIS EMPLOYER, A PROBLEM OBVIOUSLY ARISES AS TO THE MEANING TO BE ATTACHED TO THE TERM "GUARD". IS IT TO BE CONTRUED LOOSELY IN A GENERAL AND INDEFINITE SENSE, AS SUGGESTED, OR IN A MORE RESTRICTED AND PERHAPS TECHNICAL SENSE? IT IS OF FUNDAMENTAL IMPORTANCE, THEREFORE, TO OUR DECISION IN THIS CASE FOR US TO DETERMINE THE MEANING WHICH THE LEGISLATURE INTENDED TO GIVE TO THE WORD "GUARD".

THE POSITION TAKEN IN THE DISSENTIENT OPINION OF OUR COLLEAGUE IS THAT THE MEANING OF THE SECTION MUST BE DERIVED ENTIRELY FROM THE WORDS "A PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF HIS EMPLOYER". IT IS ARGUED THAT THESE WORDS ARE SO ABUNDANTLY PLAIN AND UNAMBIGUOUS AS TO ADMIT OF ONLY ONE MEANING AND THAT, THEREFORE, ANY INQUIRY INTO THE OBJECT OF THE SECTION OR THE MISCHIEF WHICH IT

WAS INTENDED TO REMEDY BY REFERENCE TO THE SPIRIT AND INTENT OF THE ACT AS A WHOLE IS IRRELEVANT AND IS IN FACT IMPROPER. WITH RESPECT, WE BELIEVE THAT THE CANONS OF STATUTORY CONSTRUCTION APPLICABLE TO OUR INQUIRY INTO THE MEANING OF THIS SECTION REQUIRE US TO LOOK BEYOND THE MERE WORDS OF THE SECTION ITSELF.

. . . IT IS IMPOSSIBLE TO CONTEND THAT THE MERE FACT OF A GENERAL WORD BEING USED IN A STATUTE PRECLUDES ALL INQUIRY INTO THE OBJECT OF THE STATUTE OR THE MISCHIEF WHICH IT WAS INTENDED TO REMEDY, COX V. HAKES (1890) 15 APP. CAS. 506 PER LORD HALSBURY, L.C. AT P. 517.

LANGUAGE IS RARELY SO FREE FROM AMBIGUITY AS TO BE INCAPABLE OF BEING USED IN MORE THAN ONE SENSE, AND TO ADHERE RIGIDLY TO THE LITERAL AND PRIMARY MEANING IN ALL CASES WOULD BE TO MISS ITS REAL MEANING IN MANY . . . GENERAL WORDS ADMIT OF INDEFINITE EXTENSION OR RESTRICTION, ACCORDING TO THE SUBJECT TO WHICH THEY RELATE AND THE SCOPE AND OBJECT IN CONTEMPLATION. THEY MAY CONVEY FAITHFULLY ENOUGH ALL THAT WAS INTENDED, AND YET COMPRISE MUCH THAT WAS NOT; OR BE SO RESTRICTED IN MEANING AS NOT TO REACH ALL THE CASES WHICH FALL WITHIN THE REAL INTENTION. . . . THE TRUE MEANING OF ANY PASSAGE. . . IS TO BE FOUND NOT MERELY IN THE WORDS OF THAT PASSAGE, BUT IN COMPARING IT WITH OTHER PARTS OF THE LAW, ASCERTAINING ALSO WHAT WERE THE CIRCUMSTANCES WITH REFERENCE TO WHICH THE WORDS WERE USED, AND WHAT WAS THE OBJECT APPEARING FROM THOSE CIRCUMSTANCES WHICH THE LEGISLATURE HAD IN VIEW. MAXWELL ON THE INTERPRETATION OF STATUTES (1962) 11 ED. PP. 17-19.

IN ALL CASES THE OBJECT IS TO SEE WHAT IS THE INTENTION EXPRESSED BY THE WORDS USED. BUT, FROM THE IMPERFECTION OF LANGUAGE, IT IS IMPOSSIBLE TO KNOW WHAT THAT INTENTION IS WITHOUT INQUIRING FURTHER AND SEEING WHAT THE CIRCUMSTANCES WERE WITH REFERENCE TO WHICH THE WORDS WERE USED, AND WHAT WAS THE OBJECT APPEARING FROM THOSE CIRCUMSTANCES, WHICH THE PERSON USING THEM HAD IN VIEW; FOR THE MEANING OF WORDS VARIES ACCORDING TO THE CIRCUMSTANCES WITH RESPECT TO WHICH THEY WERE USED. . . ." PER LORD BLACKBURN IN RIVER WEAR COMMISSIONER V. ADAMSON (1876-7) 2 APP. CAS. 743 AT P. 763.

...WHERE STATUTORY LANGUAGE ADMITS OF ONLY ONE MEANING, THEN OF COURSE NO OTHER MEANING MAY BE APPLIED BUT IT IS THE INTENTION OF THE LEGISLATURE UPON THE WHOLE STATUTE THAT IS THE DETERMINING FACTOR ..." PER KELLOCK, J. IN THE KING V. QUAN [1948] S.C.R. 508 AT P. 520.

...IN CONSTRUING ACTS OF PARLIAMENT, THE WORDS WHICH ARE USED ARE NOT ALONE TO BE REGARDED. REGARD MUST ALSO BE HAD TO THE INTENT AND MEANING OF THE LEGISLATURE..WE HAVE THEREFORE TO CONSIDER, NOT MERELY THE WORDS OF THIS ACT OF PARLIAMENT, BUT THE INTENT OF THE LEGISLATURE, TO BE COLLECTED FROM THE CAUSE AND NECESSITY OF THE ACT BEING MADE, FROM A COMPARISON OF ITS SEVERAL PARTS, AND FROM FOREIGN CIRCUMSTANCES, SO FAR AS THEY CAN JUSTLY BE CONSIDERED TO THROW LIGHT UPON THE SUBJECT...PER TURNER, L.J. IN HAWKINS V. GATHEROLE (1855) 6 DE G. M. AND G. 1, 20, 22, SEE ALSO VISCOUNTESS RHONDDAS CLAIM [1922] 2 A.C. 339, AT PP. 369, 397, SEE ALSO SECTION 10 OF THE INTERPRETATION ACT, R.S.O. 1960.

...ALTHOUGH THE WORDS OF A STATUTE ARE NORMALLY TO BE CONSTRUED IN THEIR ORDINARY MEANING, DUE REGARD MUST BE HAD TO THEIR SUBJECT MATTER AND OBJECT, AND TO THE OCCASION ON WHICH AND THE CIRCUMSTANCES WITH REFERENCE TO WHICH THEY ARE USED, AND THEY SHOULD BE CONSTRUED IN THE LIGHT OF THEIR CONTEXT RATHER THAN IN WHAT MAY BE EITHER THEIR STRICT ETYMOLOGICAL SENSE OR THEIR POPULAR MEANING APART FROM THAT CONTEXT.... FOR THE PURPOSES OF CONSTRUCTION, THE CONTEXT OF WORDS WHICH ARE TO BE CONSTRUCTED INCLUDES NOT ONLY THE PARTICULAR PHRASE OR SECTION IN WHICH THEY OCCUR, BUT ALSO THE OTHER PARTS OF THE STATUTE. THUS A STATUTE SHOULD BE CONSTRUED AS A WHOLE.... THE LITERAL MEANING OF A PARTICULAR SECTION MAY IN THIS WAY BE EXTENDED OR RESTRICTED BY REFERENCE TO OTHER SECTIONS AND TO THE GENERAL PURVIEW OF THE STATUTE.... HALSBURY'S LAWS OF ENGLAND, 3RD ED. VOL. 36, PP. 394-395; SEE ALSO E. GAGNON ET AL. V. FOUNDATION MARITIME LIMITED, (1961) 28 D.L.R. 174 [1961] S.C.R. 435 ESP. RITCHIE, J.

SECTION 9 MUST, THEREFORE, RECEIVE AN INTERPRETATION WHICH WILL BEST HARMONIZE WITH ITS LANGUAGE AND THE IMPLEMENTATION OF ITS OBJECTS AND PURPOSES. IN THE ABSENCE OF ANY SPECIFIC LEGISLATIVE DIRECTION IN THE SECTION AS TO THE MEANING TO BE ASCRIBED TO THE TERM "GUARD", THE PRECISE SCOPE AND OPERATION OF SECTION 9 MUST BE DETERMINED IN THE LIGHT OF THE OBJECTS AND PURPOSES INTENDED TO BE ACHIEVED AND SERVED BY IT WHEN CONSTRUED IN CONTEXT WITH THE ACT AS A WHOLE.

IT IS NOT WITHOUT INTEREST, IN CONSIDERING THE MEANING AND SCOPE OF SECTION 9, TO LOOK AT SOME OF THE REMARKS AND REASONING OF THE BOARD IN THE TWO DECISIONS IN THE CANADIAN WESTINGHOUSE COMPANY LIMITED CASES, D.L.S. (1) 7-1325, AND (2) 7-1361. AT THE TIME OF THESE CASES, OF COURSE, THERE WAS NO LEGISLATIVE ENACTMENT SIMILAR TO SECTION 9 NOR ANY REFERENCE WHATSOEVER IN THE THEN EXISTING LEGISLATION TO GUARDS. THE LEGISLATIVE PROVISION RELATING TO GUARDS CONTAINED IN SECTION 9 OF THE PRESENT ACT DID NOT APPEAR IN THE LEGISLATION UNTIL THE ACT OF 1950 (R.S.O. 1950, c. 194, s. 8). THE APPLICANT IN EACH OF THE WESTINGHOUSE CASES SOUGHT TO BE CERTIFIED AS BARGAINING AGENT FOR A UNIT CONSISTING OF "ALL WATCHMEN IN THE EMPLOY OF THE RESPONDENT COMPANY" WITH CERTAIN DESIGNATED EXCEPTIONS OF SUPERVISORY PERSONNEL. A LARGE NUMBER OF THE PERSONS DESCRIBED AS "WATCHMEN" HAD BEEN APPOINTED SPECIAL CONSTABLES UNDER THE CONSTABLES ACT (LATER REPEALED BY THE POLICE ACT, STATUTES OF ONTARIO, 1946, CHAPTER 72). THE EMPLOYER ARGUED THAT THESE PERSONS WERE EXCLUDED FROM THE OPERATION OF THE ACT BECAUSE THEY WERE MEMBERS OF A "POLICE FORCE". ALTERNATIVELY, THE EMPLOYER ARGUED THAT THEY WERE EMPLOYED IN A CONFIDENTIAL CAPACITY WITHIN THE MEANING OF THE ACT AND, THEREFORE, WERE NOT EMPLOYEES AS THEREIN DEFINED. THE BOARD REJECTED BOTH OF THESE ARGUMENTS. IN DEALING WITH THE QUESTION OF THE APPROPRIATENESS OF A UNIT CONSISTING OF GUARDS AND PRODUCTION EMPLOYEES, THE BOARD IN THE SECOND CASE STATED, IN PART, AT PP. 7-1361, 7-1362, AS FOLLOWS:-

IN THE PRESENT CASE, THE PETITIONERS REQUEST CERTIFICATION OF BARGAINING REPRESENTATIVES RESPECTING A BARGAINING UNIT COMPOSED OF WATCHMEN ONLY. THERE IS NO DOUBT THAT NEARLY ALL THE WATCHMEN ARE SWORN IN AND ALL CARRY ARMS. THEY CHECK EMPLOYEES IN AND OUT OF THE PLANT AND HAVE POWER TO SEARCH AND CHECK MATERIAL GOING OUT AND IN. THEY ARE CALLED IN TO ASSIST IN DISCIPLINE AND HAVE THE POWER TO MAKE ARRESTS.

...IT IS CONTENDED ON BEHALF OF THE RESPONDENT THAT CERTIFICATION SHOULD NOT BE GRANTED UPON THE GROUNDS THAT THE CERTIFICATION WILL IN EFFECT JOIN THE GUARDS WITH THE PRODUCTION EMPLOYEES IN ONE BARGAINING UNIT WHICH IS NOT ONE APPROPRIATE FOR COLLECTIVE BARGAINING...

...WHILE THE BARGAINING REPRESENTATIVES NAMED IN THE PRESENT PETITION MAY DIFFER FROM THOSE WHO REPRESENT PRODUCTION EMPLOYEES, THE BOARD FEELS THAT THE ACTUAL BARGAINING MAY WELL BE CARRIED ON BY THE SAME INDIVIDUALS OR AT LEAST WITH SOME IN COMMON AND THAT THE CONTROL OF BARGAINING NEGOTIATIONS MAY REST IN THE SAME INDIVIDUALS. THE BOARD IS CONVINCED THAT THE INTERESTS OF THE UNIT COMPOSED OF THE GUARDS DIFFER GREATLY FROM THOSE OF THE PLANT EMPLOYEES AND MIGHT WELL SHARPLY CONFLICT IN THE FUTURE. AS WAS POINTED OUT IN THE EARLIER WESTINGHOUSE DECISION, WATCHMEN BEAR RESPONSIBILITIES OF A SPECIAL NATURE TOWARDS THEIR EMPLOYER, CARRYING OUT AS THEY DO DUTIES OF A REGULATORY AND DISCIPLINARY CHARACTER DIRECTED MAINLY AGAINST THEIR FELLOW EMPLOYEES AND WHICH REQUIRE THAT THEY BE ENTRUSTED WITH AND EXERCISE ON BEHALF OF THEIR EMPLOYER AUTHORITY AND RESPONSIBILITY OF A HIGH ORDER. THE BOARD HAS IN THE PAST CONSISTENTLY REFUSED APPLICATIONS TO CERTIFY BARGAINING REPRESENTATIVES FOR A BARGAINING UNIT OF BOTH PLANT AND OFFICE EMPLOYEES BY REASON OF THE DIVERGENT INTERESTS OF THE TWO GROUPS. IN INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO) AND ELECTRICAL AUTO-LITE LIMITED, SARNIA [D.L.S. P. 7-1343], THE BOARD REFUSED TO CERTIFY THE SAME LOCAL FOR BOTH GROUPS AND INDICATED THAT THERE SHOULD AT LEAST BE A SEPARATE LOCAL. IN THE OPINION OF THE BOARD, IN THE CASE OF THE GUARDS THE INTEREST IS EVEN MORE DIVERGENT. IN THE INSTANT CASE, THE SAME INTERNATIONAL UNION APPLIES JOINTLY WITH A SEPARATE LOCAL BUT AMENDMENT IS ASKED FOR STRIKING OUT THE NAME OF THE INTERNATIONAL. THE BOARD IS OF THE OPINION UNDER ALL THE CIRCUMSTANCES DISCLOSED THAT IT SHOULD NOT CERTIFY EITHER THE INTERNATIONAL AND ITS LOCAL OR THE LOCAL ITSELF, AND THE PETITION MUST THEREFORE BE DISMISSED.

(EMPHASES ADDED)

4. IT IS AN ELEMENTARY RULE OF STATUTORY INTERPRETATION THAT EVERY PART OF A SECTION OF AN ENACTMENT MUST BE VIEWED IN CONTEXT AND IN CONNECTION WITH THE WHOLE, SO AS TO MAKE, IF PRACTICABLE, ALL THE PARTS HARMONIZE AND GIVE A SENSIBLE AND INTELLIGENT EFFECT TO EACH. IT IS NOT TO BE PRESUMED THAT THE LEGISLATURE INTENDED ANY PART OF A STATUTE TO BE INCONSISTENT WITH OTHER PARTS OR TO BE WITHOUT MEANING.

5. THE "MISCHIEF" RULE OF STATUTORY INTERPRETATION AS SET FORTH IN HEYDON'S CASE, 76 E.R. 637, AND AS QUOTED WITH APPROVAL BY RIDDELL, J., IN WORTHINGTON V. ROBBINS, 56 O.L.R. 285 AT P. 287, IS,

THAT FOR THE SURE AND TRUE INTERPRETATION OF ALL STATUTES...FOUR THINGS ARE TO BE DISCERNED AND CONSIDERED:-

1ST. WHAT WAS THE COMMON LAW BEFORE THE MAKING OF THE ACT?

2ND. WHAT WAS THE MISCHIEF AND DEFECT FOR WHICH THE COMMON LAW DID NOT PROVIDE?

3RD. WHAT REMEDY THE PARLIAMENT HAD RESOLVED AND APPOINTED TO CURE THE DISEASE...

4TH. THE TRUE REASON OF THE REMEDY.

6. TESTING THE INSTANT CASE AGAINST THESE RULES WE FIND:

THE COMMON LAW BEFORE THE ACT WAS THAT INDUSTRIAL UNIONS TOOK AS MEMBERS ALL EMPLOYEES IN THE PLANT OF AN EMPLOYER FOR WHOM BARGAINING RIGHTS COULD BE WON BY VOLUNTARY RECOGNITION OR BY STRENGTH ALONE, AND REPRESENTATION DISPUTES WENT TO THE PICKET LINE.

THE LEGISLATION MADE TO BRING ORDER INTO THE CONTEST BETWEEN EMPLOYERS AND UNIONS EVOLVED INTO THE ONTARIO LABOUR RELATIONS ACT. UP TO 1950 NO DISTINCTION IN COMMON LAW IS MADE BETWEEN EMPLOYEES WHO ARE GUARDS AND EMPLOYEES WHO ARE NOT GUARDS. THE ACT WAS AMENDED IN 1950 TO CORRECT THE MISCHIEF AND DEFECT APPARENT IN THE COMMON LAW, THAT IS TO SAY, THE EMPLOYER'S PROPERTY COULD PREVIOUSLY BE LEFT IN JEOPARDY SHOULD ALL EMPLOYEES, INCLUDING GUARDS, WITHDRAW THEIR LABOUR IN CONCERT AS MEMBERS OF A LOCAL UNION COVERING A GIVEN BARGAINING UNIT.

THUS, "ANY PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF HIS EMPLOYER" IS EXCLUDED FROM BARGAINING UNITS CERTIFIED UNDER THE 1950 AMENDED ACT. IN 1954 THE ACT WAS FURTHER AMENDED TO PROTECT EMPLOYERS FROM BEING PRESSURED INTO 'VOLUNTARY' RECOGNITION OF GUARDS, WITHOUT CERTIFICATION. HOWEVER, NO CHANGE IS MADE TO AFFECT THE ACCEPTED DEFINITION OF A GUARD.

THE MISCHIEF AND DEFECT FOR WHICH THE COMMON LAW DID NOT PROVIDE WAS FINALLY REMEDIED BY THE 1954 AMENDMENT AND THE TRUE REASON AND PURPOSE OF THE REMEDY WAS TO SEPARATE GUARDS WHO PROTECT THE PROPERTY OF THEIR EMPLOYER FROM THE EMPLOYEES OF THAT EMPLOYER FOR THE REASONS GIVEN ABOVE, AND THAT IS ALL.

7. IN ORDER TO APPRECIATE THE EFFECT OF THE 1954 AMENDMENT TO THE SECTION OF THE LABOUR RELATIONS ACT DEALING WITH GUARDS IT IS HELPFUL TO SET OUT THE PRESENT SECTION 9 AND COMPARE IT CLOSELY WITH THE PREDECESSOR OF SECTION 9 AS IT EXISTED PRIOR TO THE 1954 AMENDMENT. IN THE FOLLOWING COMPARISON, THE PORTIONS WHICH ARE UNDERLINED ARE COMMON TO BOTH VERSIONS AND THE PORTIONS IN BRACKETS INDICATE SLIGHT VARIATIONS BETWEEN THE TWO VERSIONS. THE PORTIONS OF THE 1954 AMENDMENT WHICH ARE NOT UNDERLINED, OF COURSE, REPRESENT THE ADDITIONS TO THE SECTION UNDER REVIEW.

SECTION UP TO 1954 AMENDMENT

8. THE BOARD SHALL NOT INCLUDE IN A BARGAINING UNIT WITH OTHER EMPLOYEES ANY PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF HIS EMPLOYER AND NO TRADE UNION SHALL BE CERTIFIED AS BARGAINING AGENT FOR A BARGAINING UNIT OF SUCH GUARDS IF [IT] ADMITS TO MEMBERSHIP OR IS CHARTERED BY, OR IS AFFILIATED, DIRECTLY OR INDIRECTLY, WITH AN ORGANIZATION THAT ADMITS TO MEMBERSHIP PERSONS OTHER THAN SUCH GUARDS.

SECTION AFTER 1954 AMENDMENT

9. THE BOARD SHALL NOT INCLUDE IN A BARGAINING UNIT WITH OTHER EMPLOYEES ANY PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF HIS EMPLOYER AND NO TRADE UNION SHALL BE CERTIFIED AS BARGAINING AGENT FOR A BARGAINING UNIT OF SUCH GUARDS AND NO EMPLOYER OR EMPLOYERS' OR- GANIZATION SHALL BE REQUIRED TO BARGAIN WITH A TRADE UNION ON BEHALF OF ANY PERSON EMPLOYED AS A GUARD IF, IN EITHER CASE, [THE TRADE UNION] ADMITS TO MEMBERSHIP OR IS CHARTERED BY, OR IS AFFILIATED, DIRECTLY OR INDIRECTLY, WITH AN ORGANIZATION THAT ADMITS TO MEMBERSHIP PERSONS OTHER THAN SUCH GUARDS.

8. IT WILL THUS BE SEEN THAT THE ONLY CHANGE IN SECTION 9 APPLIES TO ONE SITUATION ALONE, NAMELY, THE CONSEQUENCES OF VOLUNTARY RECOGNITION. THE 1954 AMENDMENT MADE NO OTHER CHANGE.

9. THE PRESENT SECTION 9 AND ITS PREDECESSOR ARE COMPLETELY SILENT ON THE SUBJECT OF THE BARGAINING RIGHTS OF GUARDS WHO ARE EMPLOYED TO PROTECT THE PROPERTY OF SOMEONE OTHER THAN THEIR EMPLOYER.

IT SURELY COULD NOT HAVE BEEN THE INTENTION OF THE LEGISLATURE TO SEGREGATE GUARDS SUCH AS THOSE UNDER CONSIDERATION IN THE INSTANT CASE FROM THE MAINSTREAM OF TRADE UNIONISM IN ONTARIO.

10. SINCE THE EMPLOYEES CONCERNED IN THE INSTANT APPLICATION ARE NOT EMPLOYED BY THE EMPLOYER WHO OWNS THE PREMISES OR PROPERTY THEY ARE EMPLOYED TO GUARD BUT ARE EMPLOYED BY ANOTHER EMPLOYER ALTOGETHER, I FIND THAT THE APPLICANT IS NOT SUBJECT TO THE PROVISIONS OF SECTION 9.

11. THE MAJORITY FINDING IS CONTRARY TO THE TRUE INTENT, MEANING AND SPIRIT OF THE LEGISLATION IN THAT A NEW CATEGORY OF EMPLOYEES IS ~~CREATED~~ THEREBY - A GROUP DENIED THE RIGHTS AND BENEFITS OF COLLECTIVE BARGAINING ACCORDED OTHER EMPLOYEES IN ONTARIO WHO WISH TO BE REPRESENTED IN THEIR DEALINGS WITH THEIR EMPLOYER BY A BONA FIDE TRADE UNION

12. THEREFORE, I FIND THE APPLICANT ENTITLED TO CERTIFICATION.

14768-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY, OPERATING AS HUDSON'S BAY COMPANY (RESPONDENT) V. EMPLOYEE (OBJECTOR).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFFE.

APPEARANCES AT THE HEARING: H. BUCHANAN, T. LLOYD FOR THE APPLICANT, AND B. H. STEWART, MISS E. SIMONSEN FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 12, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT DEPARTMENT MANAGERS, PERSONS ABOVE THE RANK OF DEPARTMENT MANAGER, OFFICE STAFF, PERSONS EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT CASUAL HELP ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

5. THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER RELATED TO MRS. BELLE BUCKLE EMPLOYED BY THE RESPONDENT AS A SECURITY OFFICER. THE RESPONDENT ALLEGES THAT SHE IS A GUARD WITHIN THE MEANING OF SECTION 9 OF THE LABOUR RELATIONS ACT AND IS THEREFORE EXCLUDED FROM THE BARGAINING UNIT. BRIEFLY, THE EVIDENCE ESTABLISHES THAT MRS. BUCKLE HAS BEEN EMPLOYED BY THE RESPONDENT FOR ABOVE 8 YEARS AS A SALES CLERK AND WAS APPOINTED A SECURITY OFFICER ON MAY 1ST, 1968. SHE WORKS THREE DAYS A WEEK AT THIS JOB AND TWO DAYS A WEEK AS A FULL TIME SALES CLERK BUT SHE WAS TOLD THAT EVENTUALLY SHE WOULD BE EMPLOYED FULL TIME AS A SECURITY OFFICER. SHE DOES NOT WEAR A UNIFORM OR A BADGE; SHE HAS NOT BEEN SWORN IN AS A SPECIAL CONSTABLE AND DOES NOT CARRY ARMS. HER DUTIES AS A SECURITY OFFICER INCLUDE FIRE WATCHING, CHECKING EMPLOYEES IN AND OUT OF THE STORE, WATCHING FOR AND APPREHENDING SHOP LIFTERS, CHECKING DOORS, CUSTOMER BILLS AND CHEQUES. SHE HAD NOTHING TO SHOW THAT SHE HAS THE POWER TO ARREST BUT SHE HAS APPREHENDED SEVERAL PERSONS. SHE DOES NOT ASSIST IN THE DISCIPLINING OF EMPLOYEES BUT HAS COMPLAINED ABOUT A STAFF MEMBER NOT USING THE PROPER PROCEDURE IN TAKING OUT PARCELS FROM WHICH DISCIPLINARY ACTION RESULTED. SHE HAS ON BEHALF OF THE RESPONDENT PREFERRED A COMPLAINT BEFORE THE COURT. A COPY OF THE MANUAL SETTING OUT A JOB DESCRIPTION HEADED "SENIOR PROTECTION OFFICER" WAS FILED WITH THE BOARD WHICH MRS. BUCKLE STATED SHE RECEIVED ON MAY 22ND AND AT THAT TIME WAS TOLD HER OFFICIAL TITLE WITH THE RESPONDENT WAS, SENIOR PROTECTION OFFICER. THE DESIGNATION CONTAINED IN THE JOB DESCRIPTION IS THAT THE SENIOR PROTECTION OFFICER IS THE INDIVIDUAL IN CHARGE OF SECURITY WITHIN THE STORE OF THE COMPANY'S ASSETS AGAINST THEFT, BURGLARY, FRAUD AND WILFUL DAMAGE. THE OFFICER IS RESPONSIBLE TO THE STORE MANAGER FOR ALL MATTERS OF A SECURITY NATURE INVOLVING STAFF AND CUSTOMERS IN THE STORE. WITH RESPECT TO HER RELATIONS WITH THE OTHER STAFF PART OF THE DIRECTIONS SET OUT IN APPENDIX "N" TO THE MANUAL IS SIGNIFICANT I.E. "THE PROTECTION OFFICER IS THE POLICEMAN OF THE STORE, THEREFORE HE CANNOT BECOME OVERLY FRIENDLY OTHERWISE HIS POSITION BECOMES UNTENABLE."

6. SECTION 9 OF THE ACT STATES IN PART:

THE BOARD SHALL NOT INCLUDE IN A BARGAINING UNIT WITH OTHER EMPLOYEES A PERSON EMPLOYED AS A GUARD TO PROTECT THE PROPERTY OF HIS EMPLOYER...

IT IS ABUNDANTLY CLEAR FROM ALL THE EVIDENCE CONTAINED IN THE EXAMINER'S REPORT THAT THE PERSON EMPLOYED BY THE RESPONDENT AS A SENIOR PROTECTION OFFICER IS EMPLOYED TO PROTECT ITS PROPERTY BOTH REAL AND PERSONAL. WE FIND THAT MRS. BUCKLE, ALTHOUGH WORKING AS A SALES CLERK FOR TWO DAYS OUT OF HER REGULAR WORK WEEK OF FIVE DAYS, AS OF THE DATE OF THIS APPLICATION WAS PRIMARILY EMPLOYED BY THE RESPONDENT AS THE SENIOR PROTECTION OFFICER.

IN THIS POSITION THE EVIDENCE ESTABLISHES THAT SHE EXERCISES A SIMILAR TYPE OF RESPONSIBILITY AS A PRIVATE POLICEMAN. HER INCLUSION THEREFORE IN THE BARGAINING UNIT WOULD IN OUR OPINION CONFRONT HER WITH A SERIOUS CONFLICT BETWEEN THE SPECIAL DUTIES TO PROTECT THE PROPERTY OF HER EMPLOYER AND THE LOYALTY TO THE OTHER EMPLOYEES IN THE BARGAINING UNIT. FOR REFERENCE SEE THE GEORGE A. CRAIN & SONS LTD. CASE, 63 C.L.L.C. 1205.

7. WE THEREFORE FIND THAT MRS. BELLE BUCKLE IS A GUARD WITHIN THE MEANING OF SECTION 9 OF THE ACT AND IS THEREFORE NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 3RD, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14847-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. KINGSWAY PLASTERING CO. LTD. (RESPONDENT) OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: MARTIN LEVINSON, T. NEIL AND E. RAGNO FOR THE APPLICANT; R. B. STATTON FOR THE RESPONDENT; AND A. BURIGANA FOR THE INTERVENER.

DECISION OF THE BOARD: SEPTEMBER 9, 1968.

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4. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA No. 8.

5. THE RESPONDENT AND THE INTERVENER SUBMIT THAT THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ARE ALREADY COVERED BY A COLLECTIVE AGREEMENT BETWEEN THEM DATED FEBRUARY 22ND, 1968. THE DURATION CLAUSE OF THE COLLECTIVE AGREEMENT, WHICH WAS FILED WITH THE BOARD, PROVIDES THAT THE AGREEMENT IS TO BE EFFECTIVE FROM MAY 1ST, 1968 TO APRIL 30TH, 1971. BY THE SCOPE CLAUSE, THE RESPONDENT RECOGNIZES THE INTERVENER AS THE BARGAINING AGENT FOR ALL OF ITS EMPLOYEES. THE AGREEMENT PROVIDES WAGE RATES FOR THE CLASSIFICATION "PLASTERER-TRAINEES". BY AN EXAMINER'S REPORT DATED AUGUST 1ST, 1968, THE PARTIES AGREE THAT THE CLASSIFICATION OF "PLASTERER-TRAINEES" AND "LABOURERS" ARE ONE AND THE SAME FOR THE PURPOSES OF THE APPLICATION.

6. IN THE ROSELAWN PLASTERING Co. LTD. CASE, O.L.R.B. MONTHLY REPORT, MARCH 1968, P. 1178, THE BOARD MADE THE FOLLOWING OBSERVATIONS WITH RESPECT TO THE CURRENT CONSTITUTION OF THE INTERVENER:

7. SECTION 4(F) OF THE CONSTITUTION PROVIDES THAT ONLY MEMBERS OF A LOCAL UNION WHO ARE CLASSIFIED AS PLASTERERS, CEMENT MASONS AND SHOP HANDS CAN REPRESENT A LOCAL UNION AT CONVENTIONS OF THE PARENT INTERNATIONAL UNION. IN OTHER WORDS, PLASTERERS' HELPERS COULD NOT REPRESENT A LOCAL UNION. IT IS AXIOMATIC IN THIS CIRCUMSTANCE THAT PLASTERERS' HELPERS WOULD NOT BE ABLE TO HOLD ANY OFFICES IN THE INTERNATIONAL UNION. THIS FACT WAS AFFIRMED BY CLEMENTS IN HIS EVIDENCE. MOREOVER, ACCORDING TO CLEMENTS, PLASTERERS' HELPERS COULD NOT HOLD OFFICE IN A LOCAL UNION AND DID NOT EVEN HAVE DUES BOOKS.

8. SECTION 21 OF THE CONSTITUTION PROVIDES SOLELY FOR THE CHARTERING OF LOCAL UNIONS TO REPRESENT ONLY ONE PRIMARY CLASSIFICATION OR MORE THAN ONE PRIMARY CLASSIFICATION. THE PRIMARY CLASSIFICATIONS ARE PLASTERERS, CEMENT MASONS AND SHOP HANDS. PLASTERERS' HELPERS ARE NOT A PRIMARY CLASSIFICATION. MOREOVER, SECTION 28(A) OF THE CONSTITUTION CONTEMPLATES ONLY APPLICATIONS FOR MEMBERSHIP BEING MADE BY JOURNEYMEN PLASTERERS, CEMENT MASONS AND SHOP HANDS AND THEIR APPRENTICES. FURTHER, SECTION 125 OF THE CONSTITUTION PROVIDES THAT NO APPLICANT FOR MEMBERSHIP AS A JOURNEMAN UNDER ONE OF THE FULL PRIMARY CLASSIFICATIONS SHALL BE INITIATED INTO ANY LOCAL UNION UNLESS AND UNTIL HE HAS COMPLETED HIS TERM OF APPRENTICESHIP TO THE TRADE. PLASTERERS' HELPERS HAVE NO TRAINING AS INDENTURED APPRENTICES.

7. THE REPRESENTATIVE OF THE INTERVENER SUBMITS THAT SECTION 18(F) OF THE CONSTITUTION PERMITS THE INTERVENER TO TAKE PLASTERER TRAINEES INTO MEMBERSHIP. THE SUBSECTION READS:

THE GENERAL EXECUTIVE BOARD SHALL HAVE THE POWER TO CREATE A SPECIAL SUB-CLASSIFICATION OF MEMBERSHIP FOR ALL MECHANICS, SKILLED CRAFTSMEN AND ARTISANS WORKING IN OR ON ANY AND ALL ALLIED TYPES AND KINDS OF WORK THAT IS FUNDAMENTALLY RELATED TO AND PART OF THE PLASTERERS', CEMENT MASONS' AND SHOP HANDS' WORK. SUCH SUB-CLASSIFICATION MUST FIRST BE ALLOCATED TO ONE OF THE THREE PRIMARY CLASSIFICATIONS OF PLASTERER, CEMENT MASON OR SHOP HAND.

THE REPRESENTATIVE OF THE INTERVENER SUBMITS THAT THE ABOVE AUTHORITY VESTED IN THE GENERAL EXECUTIVE BOARD HAS BEEN ACTED UPON WITH REGARD TO THE SUB-CLASSIFICATION OF PLASTERER TRAINEES. HIS EVIDENCE IN SUPPORT OF THIS CONTENTION IS A LETTER DATED APRIL 2ND, 1964 ON THE STATIONERY OF THE OFFICE OF THE GENERAL EXECUTIVE BOARD. THE LETTER IS ADDRESSED TO "CHARLES W. IRVINE, VICE-PRESIDENT, OP&CMIA" IN TORONTO AND PURPORTS TO BE SIGNED BY JOHN J. HAUCK, GENERAL SECRETARY-TREASURER OF THE INTERNATIONAL. THE BODY OF THE LETTER READS:

THE GENERAL EXECUTIVE BOARD, DURING ITS MEETING OF MARCH 25TH, 1964 AGAIN GAVE CONSIDERATION TO THE QUESTION OF CREATING THE CLASSIFICATION OF PLASTERER HELPER AND VOTED THAT THIS MATTER BE HELD OVER, INsofar AS THE UNITED STATES IS CONCERNED.

HOWEVER, THE BOARD DID VOTE THAT YOU, AS VICE-PRESIDENT IN THE DOMINION OF CANADA, BE AUTHORIZED TO NEGOTIATE AN AGREEMENT IN TORONTO IN THE BEST INTEREST OF THE OP&CMIA COVERING THE USE OF PLASTERER HELPERS OR TRAINEES.

IT IS TO BE NOTED THAT WHILE THE LETTER AUTHORIZES IRVINE "TO NEGOTIATE AN AGREEMENT IN TORONTO...COVERING THE USE OF PLASTERER HELPERS OR TRAINEES", IT DOES NOT CREATE A SPECIAL SUB-CLASSIFICATION OF MEMBERSHIP FOR THEM. IN OTHER WORDS, THE POSITION OF THE INTERVENER UNDER ITS CONSTITUTION IS NO DIFFERENT IN THE INSTANT CASE THAN IT WAS IN THE ROSELAWN PLASTERING CO. LTD. CASE (SUPRA) FURTHER, NO NEW EVIDENCE WAS ADDUCED AS TO THE INTERVENER'S ORGANIZATIONAL PAST PRACTICE SINCE THE EARLIER CASE. IN THIS RESPECT, ALSO, THE INTERVENER WOULD THEREFORE APPEAR TO BE IN THE SAME POSITION AS IT WAS FIVE MONTHS AGO.

8. BASED ON THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT THE INTERVENER DOES NOT HAVE JURISDICTION TO ACCEPT THE PLASTERER TRAINEES, WHO ARE THE SUBJECT OF THIS APPLICATION, INTO MEMBERSHIP. THIS BEING THE CASE, THE INTERVENER CANNOT BE THE BARGAINING AGENT FOR THIS CLASSIFICATION OF EMPLOYEE OF THE RESPONDENT. THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER AS IT RELATES TO PLASTERER TRAINEES, ACCORDINGLY, IS NOT A BAR TO THE INSTANT APPLICATION.

9. THE BOARD FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

10. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED AUGUST 1ST, 1968, THE BOARD FINDS THAT LUCIANO VIVAN IS INCLUDED IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 9.

11. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 22ND, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

12. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

13. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

14849-68-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION
(APPLICANT) v. NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD.
(RESPONDENT) v. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND F. W. MURRAY.

APPEARANCES AT THE HEARING: A.E. GOLDEN, J. F. KANE AND E. A. WADDELL FOR THE APPLICANT, G. G. HURLBURT, J. M. SHEPHERD AND A. A. WHITE FOR THE RESPONDENT, W. E. SMALLWOOD, A. HARGREAVES, L. SNOW AND N. M. BOURDON FOR THE OBJECTORS

DECISION OF THE BOARD: SEPTEMBER 24, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR PURPOSES OF CLARITY, THE BOARD DECLARES THAT LABORATORY TECHNICIANS AND SERVICE TECHNICIANS ENGAGED IN QUALITY CONTROL WORK ARE INCLUDED IN THE BARGAINING UNIT.

5. THERE WAS FILED WITH THE BOARD A STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION. WALTER SMALLWOOD WHO APPEARED ON BEHALF OF THE OBJECTORS TESTIFIED AT THE BOARD HEARING OF THE APPLICATION ON JULY 30TH, 1968 THAT HE HAD PREPARED THE DOCUMENT AND SECURED ALL OF THE SIGNATURES ON IT OUTSIDE THE PREMISES OF THE RESPONDENT.

6. BY LETTER DATED AUGUST 1ST, COUNSEL FOR THE APPLICANT (WHO WAS NOT IN ATTENDANCE AT THE BOARD HEARING ON JULY 30TH, 1968) ADVISED THE BOARD THAT INFORMATION HAD COME INTO THE POSSESSION OF JOHN KANE (THE REPRESENTATIVE OF THE APPLICANT WHO WAS IN ATTENDANCE AT THE HEARING ON JULY 30TH), FOLLOWING THE HEARING, THAT AT LEAST THREE PERSONS WHO SIGNED THE STATEMENT OF DESIRE DID SO IN THE PREMISES OF THE COMPANY DURING WORKING HOURS. COUNSEL REQUESTED THAT THE BOARD LIST THE APPLICATION FOR A FURTHER HEARING FOR THE PURPOSE OF ALLOWING THE APPLICANT TO ADDUCE EVIDENCE IN SUPPORT OF THE ABOVE ALLEGATION WHICH IS CONTRARY TO THE TESTIMONY OF SMALLWOOD.

7. BY LETTER DATED AUGUST 14TH, 1968, WALTER SMALLWOOD SET FORTH CERTAIN ALLEGATIONS OF IMPROPRIETY ON THE PART OF THE APPLICANT IN THE SECURING OF ITS EVIDENCE OF MEMBERSHIP.

8. THE BOARD LISTED THIS MATTER FOR CONTINUATION OF HEARING INTER ALIA FOR THE PURPOSE OF ALLOWING THE PARTIES TO SHOW CAUSE AS TO WHY THE BOARD SHOULD ENTERTAIN THE CHARGES OF THE APPLICANT RELATING TO THE STATEMENT OF DESIRE AND THE CHARGES OF SMALLWOOD RELATING TO THE APPLICANT'S EVIDENCE OF MEMBERSHIP. AT THE BOARD HEARING ON AUGUST 30TH, 1968, COUNSEL FOR THE APPLICANT REAFFIRMED THAT KANE WAS UNAWARE OF THE ALLEGATIONS CONTAINED IN PARAGRAPH 6 UNTIL AFTER THE BOARD HEARING

ON JULY 30TH, 1968. SMALLWOOD ADVISED THE BOARD THAT THE INFORMATION UPON WHICH HE BASED HIS ALLEGATIONS WAS KNOWN TO HIM IN THE LATTER PART OF JUNE.

9. IN THE FLECK MANUFACTURING LIMITED CASE, 62 C.L.L.C. 1046, THE BOARD STATED:

IT IS INCUMBENT ON ALL PARTIES TO PROCEEDINGS BEFORE THE BOARD TO INVESTIGATE MATTERS RELEVANT TO THEIR CASES AS EARLY AS POSSIBLE AND IF THEY INTEND TO MAKE ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT AGAINST ANOTHER PARTY TO DO SO PROMPTLY. THE OBJECT OF THIS REQUIREMENT, WHICH FINDS EXPRESSION IN SECTION 48 OF THE RULES, IS OBVIOUSLY TO EXPEDITE AND FACILITATE THE HEARING AND PROCESSING OF APPLICATIONS UNDER THE ACT AND TO AVOID PREJUDICE, DELAY OR EMBARRASSMENT TO THE PARTIES INVOLVED. DELAYED AND LAST-MINUTE ALLEGATIONS, WHICH LEAD TO ADJOURNMENTS OR CAUSE PREJUDICE, EMBARRASSMENT OR UNNECESSARY EXPENSE TO THE OTHER PARTIES, AND WHICH WITH REASONABLE DILIGENCE COULD HAVE BEEN MADE AT A MORE TIMELY STAGE OF THE PROCEEDINGS WILL NOT BE ENTERTAINED EXCEPT FOR GOOD AND SUFFICIENT CAUSE.

THE MATERIAL PROVISIONS OF THE RULES THERE REFERRED TO ARE NOW CONTAINED IN SECTION 47(1) AND (2) OF THE BOARD'S RULES OF PROCEDURE. THESE PROVISIONS ARE AS FOLLOWS:

47.-(1) WHERE A PERSON INTENDS TO ALLEGE, AT THE HEARING OF AN APPLICATION OR COMPLAINT, IMPROPER OR IRREGULAR CONDUCT BY ANY PERSON, HE SHALL,

- (A) INCLUDE IN THE APPLICATION OR COMPLAINT;
OR
- (B) FILE A NOTICE OF INTENTION THAT SHALL
CONTAIN

A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED,

AND, WHERE HE ALLEGES THAT THE IMPROPER OR IRREGULAR CONDUCT CONSTITUTE A VIOLATION OF ANY PROVISION OF THE ACT, HE SHALL INCLUDE A REFERENCE TO THE SECTION OR SECTIONS OF THE ACT CONTAINING SUCH PROVISION.

- (2) WHERE, IN THE OPINION OF THE BOARD, A PERSON HAS NOT FILED NOTICE OF INTENTION PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER OR IRREGULAR CONDUCT, HE SHALL NOT ADDUCE EVIDENCE AT THE HEARING OF THE APPLICATION OF SUCH FACTS, EXCEPT WITH THE CONSENT OF THE BOARD AND, IF THE BOARD DEEMS IT ADVISABLE TO GIVE SUCH CONSENT, IT MAY DO SO UPON SUCH TERMS AND CONDITIONS AS IT THINKS ADVISABLE.

10. DEALING FIRST WITH THE CHARGES OF SMALLWOOD, SINCE HE HAD KNOWLEDGE OF THE ALLEGED MISCONDUCT OF THE APPLICANT IN SECURING ITS EVIDENCE OF MEMBERSHIP OVER A MONTH PRIOR TO THE BOARD HEARING, HE HAD MORE THAN AMPLE TIME TO FILE HIS CHARGES PRIOR TO THE BOARD HEARING ON JULY 30TH, 1968. THE BOARD ACCORDINGLY IS NOT PREPARED TO ALLOW SMALLWOOD TO ADDUCE EVIDENCE AT THIS TIME IN SUPPORT OF HIS CHARGES.

11. WITH RESPECT TO THE CHARGES OF THE APPLICANT, THE BOARD ADVISED THE APPLICANT OF RECEIPT OF THE STATEMENT OF DESIRE EXPRESSING OPPOSITION TO THE APPLICATION ON JULY 24TH, 1968, SIX DAYS PRIOR TO THE HEARING ON JULY 30TH. WHILE THE APPLICANT IS SEEKING LEAVE TO ADDUCE EVIDENCE TO IMPUGN THE CREDIBILITY OF SMALLWOOD WHO TESTIFIED IN SUPPORT OF THE STATEMENT OF DESIRE RATHER THAN FILE CHARGES, THE SAME BOARD POLICIES APPLY. COUNTLESS DECISIONS OF THE BOARD HAVE MADE THE NATURE AND PURPOSE OF THE BOARD'S INQUIRIES CONCERNING STATEMENTS OF DESIRE FILED IN OPPOSITION TO CERTIFICATION APPLICATIONS ABUNDANTLY CLEAR. THE APPLICANT, THEREFORE, MUST BE PRESUMED TO HAVE THIS KNOWLEDGE. ACCORDINGLY, THE APPLICANT WAS UNDER AN OBLIGATION WHEN IT RECEIVED NOTICE OF THE STATEMENT OF DESIRE TO MAKE SUCH INVESTIGATION AS IT DEEMED ADVISABLE REGARDING THE STATEMENT AND TO BE PREPARED AT THE HEARING OF THE APPLICATION TO MEET ANY EVIDENCE ADDUCED IN SUPPORT OF THE STATEMENT. THE APPLICANT CLEARLY HAD SUFFICIENT TIME TO MAKE AN INVESTIGATION BUT EITHER FAILED TO DO SO OR DID NOT PURSUE ITS INVESTIGATION WITH DUE DILIGENCE. IN SHORT, THE APPLICANT HAS FAILED TO SATISFY US THAT THE EVIDENCE IT NOW WANTS TO ADDUCE COULD NOT REASONABLY HAVE BEEN AVAILABLE TO IT AT THE TIME OF THE BOARD HEARING. IN ALL THE CIRCUMSTANCES, THE BOARD IS NOT PREPARED TO GRANT LEAVE TO THE APPLICANT TO ADDUCE EVIDENCE IN SUPPORT OF ITS ALLEGATIONS.

12. HAVING REGARD TO THE EVIDENCE RELATING TO THE ORIGINATION, PREPARATION AND CIRCULATION OF A DOCUMENT EXPRESSING OPPOSITION TO THE INSTANT APPLICATION, THE BOARD FINDS THAT THE DOCUMENT CASTS SUFFICIENT DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

13. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 23RD, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

14. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

15. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

16. THE MATTER IS REFERRED TO THE REGISTRAR.

14850-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT)
V. ZEHR'S MARKETS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN AND BOARD MEMBERS
F. W. MURRAY AND P. J. O'KEEFE.

DECISION OF THE BOARD: SEPTEMBER 12, 1968.

1. THE BOARD IN ITS DECISION OF JULY 30TH, 1968, APPOINTED AN EXAMINER TO INQUIRE INTO AND REPORT TO THE BOARD ON CERTAIN MATTERS INCLUDING THE APPROPRIATENESS OF INCLUDING EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS PRODUCE TERMINAL IN A BARGAINING UNIT OF THE RESPONDENT'S RETAIL STORE EMPLOYEES. THE PARTIES SIGNED A STATEMENT OF FACTS RELATING TO THE PRODUCE TERMINAL AND ITS RELATIONSHIP TO THE RESPONDENT'S RETAIL STORES IN KITCHENER AND THEY ASKED THE BOARD TO MAKE ITS DETERMINATION WITH RESPECT TO ITS PRODUCT TERMINAL ON THE FACTS SET OUT IN THE STATEMENT OF FACTS.

2. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE STATEMENT OF FACTS AFORESAID, THE BOARD FINDS THAT WHILE THERE IS EVIDENCE OF OCCASIONAL INTERCHANGE BETWEEN EMPLOYEES EMPLOYED IN THE PRODUCT TERMINAL AND EMPLOYEES EMPLOYED IN THE RESPONDENT'S STORES AT KITCHENER, THERE IS ALSO OCCASIONAL INTERCHANGE BETWEEN THE RESPONDENT'S PRODUCE TERMINAL AND THE RESPONDENT'S RETAIL STORES LOCATED IN WATERLOO.

3. WHILE THE RESPONDENT'S EMPLOYEES IN ITS PRODUCE TERMINAL PERFORM CERTAIN PREPARATORY WORK ON THE PRODUCE TO BE SOLD IN ITS KITCHENER STORES, SUCH WORK IS ALSO PERFORMED ON PRODUCE TO BE SOLD IN THE RESPONDENT'S STORES IN OTHER LOCATIONS.

4. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD FINDS THAT THERE IS NOT SUFFICIENT EVIDENCE TO CAUSE THE BOARD TO DEPART FROM ITS REGULAR PRACTICE OF DEFINING UNITS OF RETAIL CHAIN STORES IN TERMS OF ALL EMPLOYEES OF THE RESPONDENT'S RETAIL STORES IN KITCHENER WHICH DESCRIPTION WOULD NOT INCLUDE THE RESPONDENT'S EMPLOYEES IN ITS PRODUCE TERMINAL.

5. HAVING REGARD TO ALL THE EVIDENCE THE BOARD THEREFORE FINDS THAT THE EMPLOYEES OF THE RESPONDENT EMPLOYED IN ITS PRODUCE TERMINAL AT KITCHENER ARE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT OF THE RESPONDENT'S RETAIL STORE EMPLOYEES AT KITCHENER.

6. THE BOARD THEREFORE DIRECTS MR. J. R. HENDERSON, EXAMINER, TO COMPLETE THE BALANCE OF HIS INQUIRY AS AUTHORIZED BY THE BOARD'S DECISION OF JULY 30TH, 1968, IN THIS MATTER.

14898-68-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA (APPLICANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: TOM CORRIGAN, ANGEL RIVERA FOR THE APPLICANT; A. A. WHITE, J. N. MCKIBBON, G. F. BLACKWELL FOR THE RESPONDENT; MYRNA CLYDESDALE FOR THE GROUP OF EMPLOYEES.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
J.E.C. ROBINSON: SEPTEMBER 11, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THERE WAS FILED IN OPPOSITION TO THIS APPLICATION A TYPEWRITTEN STATEMENT OF DESIRE SIGNED BY 11 EMPLOYEES OF THE RESPONDENT, 3 OF WHOM WERE CLAIMED BY THE APPLICANT IN MEMBERSHIP. IF, THEREFORE, WEIGHT WAS GIVEN TO THE DOCUMENT IT WOULD REDUCE THE UNQUALIFIED EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT TO LESS THAN THE FIFTY-FIVE PER CENT REQUIREMENT FOR OUTRIGHT CERTIFICATION. ACCORDINGLY, THE BOARD INQUIRED INTO THE ORIGATION, PREPARATION AND THE MANNER IN WHICH EACH OF THE SIGNATURES WERE OBTAINED ON IT.

5. MYRNA CLYDESDALE, AN EMPLOYEE OF THE RESPONDENT IN ITS SAFETY DIVISION, TESTIFIED THAT AFTER THE NOTICE TO EMPLOYEES OF THE APPLICATION WAS POSTED, AT THE REQUEST OF ANOTHER EMPLOYEE, SHE AGREED TO TYPE UP A PETITION. SHE THEN ASKED MR. MORRISON, THE REGIONAL SALES MANAGER, IF SHE COULD DO THIS ALL IN ONE PETITION AND HE AT THAT TIME GAVE HER A PAMPHLET (WHICH WE ASSUME TO BE A COPY OF THE LABOUR RELATIONS ACT AND RULES OF PROCEDURE) AND WAS TOLD TO READ IT. SHE THEN TYPED THE DOCUMENT AT HER DESK ON COFFEE BREAK AT 10:00 A.M. SHE KEPT IT IN A FOLDER AT HER DESK AND TOOK IT HOME WITH HER AT NIGHT. WHILE WALKING THROUGH THE PLANT IN THE COURSE OF HER DUTIES, SHE INFORMED EMPLOYEES THAT SHE HAD THE DOCUMENT AT HER DESK WHICH THEY COULD SIGN IF THEY WISHED. EACH OF THE PERSONS WHO SIGNED THE DOCUMENT SIGNED IT AT HER DESK IN THE OFFICE IN THE MORNING OR AFTERNOON OF JULY 29TH AND 30TH. SHE WAS PRESENT WHEN EACH PERSON SIGNED. SHE SAID THAT NO ONE FROM MANAGEMENT WAS PRESENT WHEN THE DOCUMENT WAS SIGNED NOR DID SHE HAVE ANY CONVERSATIONS WITH ANYONE FROM MANAGEMENT CONCERNING THE PETITION OR THE APPLICATION FOR CERTIFICATION EXCEPT WITH MR. MORRISON AS SET OUT ABOVE. AFTER SHE OBTAINED ALL THE SIGNATURES, SHE REQUESTED PERMISSION TO TAKE ONE HALF DAY OFF WORK TO DELIVER THE PETITION TO THE BOARD. THERE WAS NO DEDUCTION FROM HER PAY FOR THIS TIME OFF AS SHE IS ON A WEEKLY SALARY. ONE OF THE RESPONDENT'S SALESMEN BROUGHT HER TO THE BOARD IN HIS CAR. MRS. CLYDESDALE STATED THAT HER DESK IS SO LOCATED IN THE OFFICE THAT IT CANNOT BE SEEN FROM THE MANAGEMENT AREA AND EMPLOYEES QUITE OFTEN GO TO HER DESK TO CHECK OUT JOBS ETC.

6. AT THE CONCLUSION OF THE PETITIONER'S EVIDENCE, THE APPLICANT ADVISED THE BOARD THAT IT WISHED TO CALL EVIDENCE IN SUPPORT OF CHARGES AGAINST THE PETITION. NO CHARGES HAD BEEN FILED WITH THE BOARD AS OF THE DATE OF THE HEARING ALTHOUGH IT WAS

READILY APPARENT THAT THE APPLICANT HAD INFORMATION RESPECTING ITS ALLEGATION SOME TIME PRIOR TO THE DATE OF THE HEARING. IN THESE CIRCUMSTANCES, THE BOARD RULED ORALLY AT THE HEARING THAT HAVING REGARD TO SECTION 47 OF THE BOARD'S RULES OF PROCEDURE IT WOULD NOT ACCEPT THE APPLICANT'S CHARGES AS THEY WERE UNTIMELY. FOR REFERENCE SEE THE FLECK MANUFACTURING LIMITED CASE, 62 C.L.L.C. 1046.

7. WHERE A PETITION HAS BEEN FILED IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION THE BOARD MUST DETERMINE WHETHER IT EXPRESSES THE TRUE WISHES OF THE PERSONS CONCERNED AND THAT MANAGEMENT HAS NOT IMPROPERLY INFLUENCED THEM IN ANY WAY IN THEIR ACTIONS. WE FIND NOTHING IMPROPER IN THE MANNER IN WHICH THE DOCUMENT ORIGINATED OR WAS PREPARED. WHILE MANAGEMENT, THROUGH MR. MORRISON, MAY HAVE BECOME AWARE THAT A PETITION WAS GOING TO BE MADE, THERE IS NO EVIDENCE TO SUGGEST THAT MANAGEMENT TOOK ANY ACTION WHATSOEVER TO INFLUENCE THE EMPLOYEES IN THE MATTER. FURTHERMORE, IN OUR VIEW THE FACT THAT MRS. CLYDESDALE WAS BROUGHT TO THE BOARD BY A SALESMAN IN HIS OWN CAR TO DELIVER THE DOCUMENT DOES NOT CONSTITUTE MANAGEMENT SUPPORT. FOR REFERENCE SEE ALSO THE PYROTENAX OF CANADA CASE, 60 C.L.L.C. 865.

8. ON ALL THE EVIDENCE BEFORE US THEREFORE WE ARE SATISFIED THAT THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION TO THE APPLICATION BY SOME OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 31ST, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

12. MR. R. A. WOOLAND, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF J. SNELGROVE AND S. WOLF.

13. THE BALLOTS OF SNELGROVE AND WOLF WILL BE SEGREGATED AND THE BALLOT BOX SEALED PENDING THE RULING OF THE BOARD AS TO WHETHER THEY ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND ELIGIBLE TO VOTE.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER OLIVER HODGES: SEPTEMBER 11, 1968.

I DISSENT. I WOULD HAVE GIVEN NO WEIGHT TO THE PETITION IN THE CIRCUMSTANCES REVEALED BY THE EVIDENCE AS I HEARD IT. MANAGEMENT ASSISTANCE WAS GIVEN TO THE PETITIONER, IN MY OPINION.

MY DECISION IS THAT THE UNION IS ENTITLED TO CERTIFICATION WITHOUT THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE, AND I SO FIND.

14939-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL 721 (APPLICANT) V. G. A. BRAUN CANADA LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: D. WEST FOR THE APPLICANT, AND W. A. HARPER FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 13, 1968.

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2. THE RESPONDENT IS EXCLUSIVELY ENGAGED IN THE SALE AND DISTRIBUTION OF LAUNDRY EQUIPMENT OF COMMERCIAL BUSINESSES AND HOSPITALS. THE MANUFACTURER OF THE LAUNDRY EQUIPMENT ARE RESPONSIBLE FOR THE DELIVERY OF THE EQUIPMENT THAT IS SOLD TO THE SITE OF THE PURCHASER'S PREMISES. THE PRACTICE OF THE RESPONDENT IS TO SUB-CONTRACT BOTH THE MOVING OF THE LAUNDRY EQUIPMENT TO THE EXACT LOCATION ON THE PREMISES WHERE IT IS TO BE INSTALLED AND THE ASSEMBLING OF THE EQUIPMENT. IN THE PRESENT CASE THE RESPONDENT SUB-CONTRACTED THE MOVING OF THE LAUNDRY EQUIPMENT FROM THE PREMISES OF THE ONTARIO HOSPITAL AT WHITBY INTO THE LAUNDRY BUILDING. THE RESPONDENT, HOWEVER, HIRED THE TWO EMPLOYEES, WHO ARE THE SUBJECT OF THIS APPLICATION, FOR A PERIOD OF TWO DAYS, TO MOVE THE LAUNDRY

EQUIPMENT TO THE EXACT LOCATION WHERE THE EQUIPMENT WAS TO BE INSTALLED. THESE EMPLOYEES ALSO PUT THE MOTORS IN THE EQUIPMENT.

3. BASED ON THE EVIDENCE, THE BOARD FINDS THAT THE RESPONDENT IS NOT AN EMPLOYER THAT OPERATES A BUSINESS IN THE CONSTRUCTION INDUSTRY. ACCORDINGLY, THE BOARD FINDS THAT THIS IS NOT AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.

4. THE BOARD FURTHER FINDS IN THE PECULIAR CIRCUMSTANCES OF THIS CASE THAT ALL EMPLOYEES OF THE RESPONDENT IN THE TOWN OF WHITBY ENGAGED IN PLACING ON SITE OF MACHINERY AND EQUIPMENT, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 15, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

14962-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA,
LOCAL 527 (APPLICANT) V. EMPIRE MAINTENANCE LTD. (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H. F. IRWIN AND D. B. ARCHER.

APPEARANCES AT THE HEARING: O. D'AGOSTINI, F. MANONI FOR THE APPLICANT AND T. F. STORIE, R. HEROUX FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER H. F. IRWIN:
SEPTEMBER 18, 1968.

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3. HAVING REGARD TO THE SPECIAL CIRCUMSTANCES OF THIS MATTER AND TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN CLEANING SERVICES AT OTTAWA AND IN THE TOWNSHIP OF NEPEAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT

OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON AUGUST 21st, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

5. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER D. B. ARCHER: SEPTEMBER 18, 1968.

I DISSENT. I BELIEVE THE RESTRICTION IN THE BARGAINING UNIT DESCRIBED IN THE DECISION OF THE MAJORITY TO CLEANING SERVICES MAY CAUSE FUTURE DIFFICULTY. I WOULD THEREFORE, HAVE CERTIFIED THE APPLICANT FOR ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA AND IN THE TOWNSHIP OF NEPEAN SUBJECT TO THE EXCEPTIONS AS DESCRIBED.

15001-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18 (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000 (INTERVENER #1) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER #2).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: S. SIMPSON AND C. GUAGLIANO FOR THE APPLICANT; F. G. HAMILTON, W. H. BARNES AND J. WALKER FOR THE RESPONDENT; J. OSLER, Q.C., AND K. CUMMINGS FOR INTERVENER #1; F. A. ACTON FOR INTERVENER #2; AND W. W. TILLER FOR ALLIED CONSTRUCTION COUNCIL.

DECISION OF THE BOARD:

SEPTEMBER 20, 1968.

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3. IN SUPPORT OF ITS APPLICATION THE APPLICANT TRADE UNION FILED 21 DUES BOOKS AND 21 CERTIFICATES OF MEMBERSHIP. THIS EVIDENCE RELATES ONLY TO 21 PERSONS. IN OTHER WORDS, THERE WAS A DUES BOOK AND CERTIFICATE FOR EACH OF THE PERSONS CLAIMED AS A MEMBER. EXCEPT IN ONE INSTANCE, THE CERTIFICATES INDICATED MEMBERSHIP IN THE APPLICANT. SIXTEEN DUES BOOKS INDICATED MEMBERSHIP IN THE APPLICANT BUT THE REMAINING FIVE SUGGESTED MEMBERSHIP IN OTHER LOCALS OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA. HOWEVER, THESE FIVE BOOKS ALL CONTAINED ENTRIES INDICATING THAT PAYMENT OF MONTHLY DUES HAD BEEN MADE TO OR RECEIVED BY ONE CHARLES GUAGLIANO, WHO TESTIFIED AT THE HEARING THAT HE WAS THE FINANCIAL SECRETARY OF THE APPLICANT TRADE UNION. MR. GUAGLIANO ALSO GAVE EVIDENCE RESPECTING THE GENERAL PRACTICE FOLLOWED BY HIS UNION WHEN A MEMBER OF ANOTHER LOCAL TRANSFERRED INTO THE APPLICANT.

4. UNDER SECTION 7 OF THE LABOUR RELATIONS ACT THE BOARD MUST BE SATISFIED THAT EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE APPLICANT TRADE UNION. IN THE PRESENT CASE WE HAVE THE CERTIFICATES OF MEMBERSHIP WHICH, EXCEPT IN ONE INSTANCE, CERTIFY TO MEMBERSHIP IN THE APPLICANT TRADE UNION. THIS TYPE OF EVIDENCE IS ACTED ON DAILY BY THE BOARD AND IS USUALLY SUFFICIENT IN ITSELF TO ESTABLISH PROOF OF MEMBERSHIP. ALTHOUGH THE FIVE DUES BOOKS AT FIRST SIGHT APPEAR TO CAUSE SOME DOUBT ON THE FIVE CERTIFICATES, HAVING REGARD TO THE EVIDENCE AS A WHOLE, INCLUDING THE ENTRIES IN THE DUES BOOKS INDICATING PAYMENT OF DUES TO THE APPLICANT, THE GENERAL EVIDENCE RELATING TO TRANSFERS AND THE CERTIFICATES OF MEMBERSHIP, WE ARE SATISFIED THAT FOUR OF THE FIVE PERSONS IN QUESTION ARE MEMBERS OF THE APPLICANT TRADE UNION. WE ARE NOT SATISFIED THAT THE FIFTH PERSON IS A MEMBER BECAUSE NOT ONLY WAS HIS DUES BOOK IN THE NAME OF A LOCAL OTHER THAN THE APPLICANT, BUT THE CERTIFICATE OF MEMBERSHIP DID NOT INDICATE THE LOCAL OF WHICH HE WAS A MEMBER. IN OUR VIEW, THE FACTS IN THIS CASE DIFFER FROM THOSE SET OUT IN THE SWANSEA CONSTRUCTION COMPANY LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1965, P. 645.

5. WE SHOULD ADD AT THIS POINT THAT WE ARE NOT CONCERNED WITH THE FACT THAT SOME OF THE DUES BOOKS DID NOT CONTAIN SIGNATURES OF MEMBERS BECAUSE THE CERTIFICATES OF MEMBERSHIP ARE SIGNED BY THE EMPLOYEES IN QUESTION.

6. ON THE BASIS OF THE ABOVE FINDINGS, IT SEEMS CLEAR THAT THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP WHICH, APART FROM OTHER CONSIDERATIONS, WOULD ENTITLE IT AT LEAST TO A REPRESENTATION VOTE. IN THESE CIRCUMSTANCES, THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING ON ALL OTHER OUTSTANDING ISSUES.

15014-68-R: ASSOCIATION OF AIRCONDITIONING, VENTILATING AND HEATING SYSTEMS FIELD TESTING TECHNICIANS, LOCAL 163, AMERICAN FEDERATION OF TECHNICAL ENGINEERS, A.F.L.-C.I.O., C.L.C. (APPLICANT) V. AERODYNAMICS ENGINEERING AND TESTING LABORATORY LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS F. W. MURRAY AND O. HODGES.

APPEARANCES AT THE HEARING: J. P. LOUGHRAN FOR THE APPLICANT AND ERNEST HATTO LESLIE LUKACS FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 16, 1968.

1. AT THE HEARING IN THIS MATTER THE APPLICANT WAS CALLED UPON TO SATISFY THE BOARD THAT ITS ORGANIZATION IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE REPRESENTATIVE OF THE APPLICANT FILED WITH THE BOARD A COPY OF A LETTER ADDRESSED TO JOSEPH P. LOUGHRAN, FROM JOHN H. DUNNE, SECRETARY TREASURER OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS DATED AUGUST 20TH, 1968. THE BODY OF THE LETTER READS IN PART:

PLEASE BE ADVISED THAT THE HEATING AND AIR CONDITIONING TECHNICAL ENGINEERING EMPLOYEES, UNDER THE JURISDICTION OF THIS FEDERATION, AND EMPLOYED IN THE PROVINCE OF ONTARIO, CANADA, HAVE BEEN GRANTED TEMPORARY CERTIFICATE OF AFFILIATION CHARTER #163.

3. THE REPRESENTATIVE OF THE APPLICANT ADVISED THE BOARD THAT ON AUGUST 21ST, 1968 A MEETING WAS HELD OF EMPLOYEES OF THE RESPONDENT INTERESTED IN JOINING A LOCAL OF THE AMERICAN FEDERATION OF TECHNICAL EMPLOYEES. THE REPRESENTATIVE OF THE APPLICANT STATED THAT HE CONDUCTED THE MEETING AND THAT BY-LAWS FOR THE LOCAL WERE ADOPTED BY THOSE PRESENT. A DOCUMENT ENTITLED "MODEL BY-LAWS FOR LOCAL UNIONS" WAS FILED AS AN EXHIBIT. ARTICLE 11. JURISDICTION READS: "THE JURISDICTION OF THIS LOCAL SHALL BE AS SET FORTH IN ITS GRANT OF CHARTER ALLOTTED BY THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS". ACCORDING TO THE REPRESENTATIVE OF THE APPLICANT NO MINUTES WERE KEPT OF THE MEETING AND NO OFFICERS WERE ELECTED. AT THE MEETING, MEMBERSHIP APPLICATIONS WERE COMPLETED BY EMPLOYEES OF THE RESPONDENT. THE APPLICATIONS SHOW NO LOCAL NUMBER. THE ATTACHED RECEIPTS, HOWEVER, WHICH INDICATE THE PAYMENT OF \$1.00 INITIATION FEE, DO SHOW LOCAL No. 163. THE ABOVE MEETING IS THE ONLY ONE THAT HAS BEEN HELD. ON AUGUST 26TH, 1968, THE APPLICANT FILED THE PRESENT APPLICATION FOR CERTIFICATION.

4. THERE WAS ALSO FILED WITH THE BOARD A FURTHER LETTER FROM JOHN H. DUNNE TO JOSEPH P. LOUGHRAN DATED AUGUST 29TH, 1968, THE BODY OF WHICH READS:

THIS IS TO INFORM YOU THAT THE ASSOCIATION OF AIRCONDITIONING, VENTILATING AND HEATING SYSTEMS, FIELD TESTING TECHNICIANS, LOCAL 163 OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL/CIO/CLC, HAS BEEN GRANTED A CERTIFICATE OF AFFILIATION CHARTER #163,

AS AN AFFILIATE OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS, AFL/CIO/CLC, LOCAL 163 WILL BE GOVERNED BY THE CONSTITUTION AND BY-LAWS OF THIS FEDERATION.

5. SECTION 1 OF ARTICLE XII OF THE CONSTITUTION OF THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS READS:

UPON RECEIPT OF A CHARTER APPLICATION, A TEMPORARY AFFILIATION CERTIFICATE FOR A PERIOD OF 90 DAYS SHALL BE ISSUED BY THE PRESIDENT OF THE FEDERATION AND BY AND WITH THE CONSENT OF THE EXECUTIVE COUNCIL, AT THE END OF WHICH TIME, IF THE NEW LOCAL UNION HAS DEMONSTRATED ITS FITNESS BOTH IN MANNER OF FUNCTIONING AND IN MEETING THE OFFICIAL OBLIGATIONS, IT THEN SHALL BE GRANTED A PERMANENT CHARTER.

6. FIRST, AT THE TIME THAT THE APPLICANT APPLIED FOR CERTIFICATION IT HAD NO OFFICERS. FURTHER THERE IS NO EVIDENCE AS TO THE MANNER IN WHICH BY-LAWS WERE ADOPTED AND THERE ARE NO MINUTES RECORDING THE CONDUCT OF THE SINGLE MEETING HELD ON AUGUST 21ST, 1968. EVEN IF WE ASSUME THAT THE "MODEL BY-LAWS FOR FEDERAL UNIONS" WAS IN FACT ADOPTED AT THE MEETING, THE JURISDICTION OF LOCAL 163 IS NOT ESTABLISHED UNTIL THE GRANT OF CHARTER IS ALLOTTED BY THE AMERICAN FEDERATION OF TECHNICAL ENGINEERS. MOREOVER, THE "TEMPORARY CERTIFICATION OF AFFILIATION CHARTER #163" REFERRED TO IN THE LETTER OF THE SECRETARY-TREASURER DATED AUGUST 20TH, 1968, AND THE "CERTIFICATE OF APPLICATION CHARTER #163" REFERRED TO IN THE SECRETARY-TREASURER'S LETTER DATED AUGUST 29TH, 1968, WHICH WE ASSUME TO BE ONE AND THE SAME DOCUMENT, WAS NOT FILED WITH THE BOARD. EVEN IF THE BOARD WAS PREPARED TO ACCEPT THESE LETTERS AS BEING EVIDENCE OF A TEMPORARY AFFILIATION CERTIFICATE, ACCORDING TO SECTION 1 OF ARTICLE XII, ONLY THE PRESIDENT OF THE FEDERATION WITH THE CONSENT OF THE EXECUTIVE COUNSEL CAN ISSUE SUCH A CERTIFICATE. THERE IS NO EVIDENCE BEFORE THE BOARD THAT THE PROVISIONS OF SECTION 1 OF

ARTICLE XII WERE COMPLIED WITH IN THIS REGARD. MOREOVER, A PERMANENT CHARTER IS ONLY GRANTED 90 DAYS AFTER THE TEMPORARY AFFILIATION CERTIFICATE HAS BEEN ISSUED. WE WOULD POINT OUT AS WELL THAT ACCORDING TO THE MODEL BY-LAWS FOR LOCAL UNION'S THE JURISDICTION OF THE LOCAL IS ONLY SET FORTH IN THE GRANT OF CHARTER.

7. FOR THE FOREGOING REASONS, THE BOARD FINDS THAT THE APPLICANT HAS NOT ESTABLISHED ITS STATUS AS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

8. THE APPLICATION, ACCORDINGLY, IS DISMISSED.

INDEXED ENDORSEMENT - TERMINATION

14956-68-R: ENGINEERS AND MAINTENANCE STAFF AT HUMBER MEMORIAL HOSPITAL (APPLICANT) v. CANADIAN UNION OF OPERATING ENGINEERS (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: CARL E. KING FOR THE APPLICANT, AND ROBERT SOULIERE FOR THE RESPONDENT.

DECISION OF THE BOARD: SEPTEMBER 18, 1968.

1. THIS IS AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS IN WHICH CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101 WAS NAMED RESPONDENT.

2. ROBERT SOULIERE, A REPRESENTATIVE OF CANADIAN UNION OF OPERATING ENGINEERS, APPEARED IN THE MATTER ON BEHALF OF THAT PARENT BODY AS WELL AS ON BEHALF OF CANADIAN UNION OF OPERATING ENGINEERS LOCAL 101. HE POINTED OUT THAT THE APPLICANT HAD ERRED IN NAMING THE RESPONDENT AND STATED THAT CANADIAN UNION OF OPERATING ENGINEERS WAS IN FACT THE BARGAINING AGENT. HE STATED THAT, SUBJECT TO THE BOARD'S RECTIFICATION OF THE ERROR WITH RESPECT TO THE RESPONDENT AND THE BOARD'S FINDING ON THE EVIDENCE IN SUPPORT OF THE APPLICATION, THERE WOULD BE NO OBJECTION TO HAVING THE MATTER SETTLED BY A REPRESENTATION VOTE.

3. THE BOARD IS SATISFIED THAT A BONA FIDE MISTAKE HAS BEEN MADE BY THE APPLICANT WITH THE RESULT THAT THE PROPER RESPONDENT HAS NOT BEEN NAMED IN THESE PROCEEDINGS. HAVING REGARD TO THE EVIDENCE AND TO THE PROVISIONS OF SECTION 78 OF THE LABOUR RELATIONS ACT, THE BOARD ORDERS THAT CANADIAN UNION OF OPERATING ENGINEERS BE SUBSTITUTED FOR CANADIAN UNION OF OPERATING ENGINEERS

LOCAL 101 APPEARING IN THE STYLE OF CAUSE OF THIS APPLICATION AS RESPONDENT HEREIN.

4. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE AND REPRESENTATIONS MADE AT THE HEARING THAT NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES OF HUMBER MEMORIAL HOSPITAL IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE RESPONDENT, CANADIAN UNION OF OPERATING ENGINEERS.

5. THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN AMONG THE EMPLOYEES OF HUMBER MEMORAIL HOSPITAL ASSOCIATION. THOSE ELIGIBLE TO VOTE ARE ALL STATIONARY ENGINEERS AND MAINTENANCE EMPLOYEES EMPLOYED BY THE HUMBER MEMORIAL HOSPITAL ASSOCIATION AT ITS HOSPITAL IN WESTON SAVE AND EXCEPT THE CHIEF ENGINEER, IN ACCORDANCE WITH THE CERTIFICATIONS ISSUED BY THE ONTARIO LABOUR RELATIONS BOARD DATED NOVEMBER 2ND, 1961, AND SEPTEMBER 14TH, 1964, ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

6. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE RESPONDENT, CANADIAN UNION OF OPERATING ENGINEERS.

7. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - SECTION 65

14310-67-U: BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 264 (COMPLAINANT) v. THE GREAT ATLANTIC AND PACIFIC TEA COMPANY LIMITED, BAKERY DIVISION (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS A. MAIN AND F. W. MURRAY.

APPEARANCES AT THE HEARING: L. A. MACLEAN AND N. GROCUIT FOR THE COMPLAINANT, F.G. HAMILTON, O.M. BOYCE AND J.W. DALEY FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER A. MAIN: SEPTEMBER 3, 1968.

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2. THIS IS A COMPLAINT MADE PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT.

3. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSONS, DOMENIC RICCI AND EVA RICCIARDI WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 48, 50(A), 50(B), 50(C) AND 52 OF THE LABOUR RELATIONS ACT AND REQUESTS THAT THEY BE REINSTATED IN THEIR EMPLOYMENT.

4. A SUMMARY OF THE RELEVANT EVIDENCE ADDUCED AT THE BOARD HEARING IN THIS MATTER IS SET OUT BELOW. IN THE LATTER PART OF 1967 THE COMPLAINANT UNION WAS PLANNING AN ORGANIZATIONAL CAMPAIGN AMONG THE EMPLOYEES IN THE BAKERY DIVISION OF THE RESPONDENT. IN ORDER TO FACILITATE ITS ORGANIZING CAMPAIGN, THE UNION DECIDED THAT DOMENIC RICCI, WHO IS A FULL-TIME PAID ORGANIZER FOR THE COMPLAINANT, SHOULD ATTEMPT TO SECURE EMPLOYMENT IN THE BAKERY DIVISION. LATE IN DECEMBER OF 1967, RICCI APPLIED FOR EMPLOYMENT WITH THE RESPONDENT AND COMPLETED AN APPLICATION FORM IN THE PRESENCE OF JAMES DALEY, THE ASSISTANT MANAGER OF THE BAKERY DIVISION. RICCI WAS HIRED AND COMMENCED HIS EMPLOYMENT WITH THE RESPONDENT ON JANUARY 1ST, 1968 AS GENERAL HELP. HIS ADMITTED PURPOSE IN SECURING EMPLOYMENT WITH THE RESPONDENT WAS TO COMPILE A LIST OF THE NAMES AND ADDRESSES OF THE RESPONDENT'S EMPLOYEES AND TO GET TO KNOW THE EMPLOYEES PERSONALLY SO AS TO BE BETTER ABLE TO ENLIST THEIR SUPPORT FOR THE COMPLAINANT UNION WHEN IT ACTUALLY COMMENCED ITS ORGANIZING CAMPAIGN. RICCI DID, IN FACT, COMPILE A LIST OF NAMES AND ADDRESSES OF EMPLOYEES WHICH HE RECORDED IN THE OFFICE OF THE COMPLAINANT IN HIS OFF-HOURS FROM THE BAKERY. DURING RICCI'S PERIOD OF EMPLOYMENT WITH THE RESPONDENT HE CONTINUED ON THE STAFF OF THE COMPLAINANT AND THE UNION MADE UP ANY DIFFERENCE BETWEEN THE WAGES HE RECEIVED FROM THE RESPONDENT AND THAT WHICH HE NORMALLY WOULD HAVE RECEIVED AS A FULL-TIME ORGANIZER FOR THE COMPLAINANT.

5. RICCI IN CONJUNCTION WITH NEIL GROCUTT, A REPRESENTATIVE OF THE COMPLAINANT UNION, DECIDED IN MID-DECEMBER OF 1967 THAT ONCE RICCI HAD SECURED EMPLOYMENT WITH THE RESPONDENT HE WOULD SEE WHETHER A JOB WAS AVAILABLE WITH THE RESPONDENT WHICH COULD BE FILLED BY EVA RICCIARDI. SHORTLY AFTER RICCI COMMENCED HIS EMPLOYMENT WITH THE RESPONDENT, AFTER MAKING INQUIRIES, HE DETERMINED THAT MRS. RICCIARDI WOULD BE ABLE TO GET EMPLOYMENT WITH THE RESPONDENT. GROCUTT THEREUPON ON JANUARY 10TH WROTE TO C. DOWNHAM, THE ACTING PLANT MANAGER OF BROWN'S BREAD LIMITED, AND REQUESTED A THREE MONTHS' LEAVE OF ABSENCE FOR EVA RICCIARDI COMMENCING ON JANUARY 13TH, 1968, "TO ASSIST THIS LOCAL AS PER OUR TELEPHONE CONVERSATION." BY LETTER DATED JANUARY 11TH, 1968, DOWNHAM ADVISED GROCUTT THAT THE COMPANY WAS PREPARED TO COMPLY WITH HIS REQUEST. EVA RICCIARDI, IN FACT, COMMENCED HER LEAVE OF ABSENCE ON THE DATE SPECIFIED.

6. EVA RICCIARDI, PRIOR TO JANUARY 13TH, 1968, HAD BEEN EMPLOYED BY BROWN'S BREAD LIMITED FOR A TOTAL OF EIGHT YEARS, SIX OF THEM BEING FOR A CONTINUOUS PERIOD TO THE TIME BEFORE SHE TOOK HER LEAVE OF ABSENCE. THE COMPLAINANT UNION WAS THE BARGAINING AGENT FOR THE EMPLOYEES OF BROWN'S BREAD LIMITED AND SHE HAD BEEN A SHOP STEWARD IN THE COMPLAINANT UNION FOR THE LAST FOUR YEARS OF HER EMPLOYMENT WITH THE COMPANY. IN THIS CAPACITY, SHE HAD PROCESSED AND TAKEN UP GRIEVANCES ON BEHALF OF THE ITALIAN SPEAKING EMPLOYEES WITH COMPANY OFFICIALS INCLUDING VICTOR COWLEY, THE THEN PLANT MANAGER AT BROWN'S BREAD LIMITED. WE WOULD ADD HERE THAT RICCI AS A UNION ORGANIZER HAD BEEN ASSIGNED TO SERVICE THE EMPLOYEES OF BROWN'S BREAD LIMITED AND ALSO HAD HAD DEALINGS WITH COWLEY ON UNION MATTERS.

7. ON OR ABOUT JANUARY 17TH, 1968, EVA RICCIARDI COMPLETED AN APPLICATION FORM FOR EMPLOYMENT WITH THE RESPONDENT AND WAS HIRED. SHE COMMENCED HER EMPLOYMENT ON JANUARY 21ST. THE COMPLAINANT UNION HAD MRS. RICCIARDI SECURE EMPLOYMENT IN THE BAKERY DIVISION OF THE RESPONDENT FOR THE SAME REASON AS RICCI, NAMELY TO COMPILE LISTS OF THE NAMES AND ADDRESSES OF EMPLOYEES AND TO GET TO KNOW THEM FOR ORGANIZING PURPOSES. MRS. RICCIARDI DURING HER EMPLOYMENT WITH THE RESPONDENT ENDEAVoured TO COMPLY WITH THIS ASSIGNMENT BY THE COMPLAINANT.

8. BOTH RICCI AND MRS. RICCIARDI TESTIFIED THAT THEY CONCEALED THEIR AFFILIATION WITH THE COMPLAINANT UNION FROM THE OTHER EMPLOYEES AND THAT DURING THEIR EMPLOYMENT WITH THE RESPONDENT THEY DID NOT ENGAGE IN ANY ACTIVE SOLICITATION OF SUPPORT FOR THE COMPLAINANT. ON A DATE IN LATE JANUARY OR EARLY FEBRUARY, GROCUIT AND ANOTHER UNION REPRESENTATIVE, MORRIS ZIMMERMAN, DISTRIBUTED LEAFLETS TO EMPLOYEES OUTSIDE THE PLANT. THE LEAFLETS SOLICITED THE SUPPORT OF THE EMPLOYEES OF THE RESPONDENT FOR THE COMPLAINANT UNION. THE TIMING OF THE DISTRIBUTION OF THE LEAFLETS WAS KNOWN IN ADVANCE BY BOTH RICCI AND MRS. RICCIARDI. RICCI ADMITTED THAT HE PURPOSELY ENGAGED EMPLOYEES IN CONVERSATION CONCERNING THE LEAFLETS AND SUBTLY ENCOURAGED SUPPORT FOR THE UNION. MRS. RICCIARDI TESTIFIED THAT SHE ALONG WITH SOME FOUR OTHER FEMALE EMPLOYEES ACCEPTED THE LEAFLETS BEING DISTRIBUTED BY GROCUIT AND ZIMMERMAN. HER EVIDENCE, HOWEVER, IS THAT AT THE DOOR OF THE SECOND FLOOR WHERE ALL OF THE GIRLS CONCERNED WORKED, THEY ENCOUNTERED DALEY AND MR. BOYCE, THE PRESENT PLANT MANAGER, WHO ASKED THEM TO HAND OVER THE LEAFLETS. THE GIRLS, INCLUDING MRS. RICCIARDI, ALL COMPLIED WITH THEIR REQUEST.

9. GROCUIT TESTIFIED THAT IN EARLY FEBRUARY HE MET COWLEY AT BROWN'S BREAD LIMITED. COWLEY TOLD HIM THAT HE WAS SHORTLY GOING TO WORK FOR THE RESPONDENT COMPANY. ACCORDING TO GROCUIT HE SUGGESTED TO COWLEY THAT POSSIBLY HIS FIRST JOB WITH THE RESPONDENT WOULD BE TO DISCHARGE RICCI AND MRS. RICCIARDI.

GROCUIT'S EVIDENCE IS THAT COWLEY EXPRESSED SURPRISE AT THIS INFORMATION AND STATED THAT HE WOULD DO WHATEVER HE FELT WAS RIGHT AS FAR AS INFORMING HIS NEW EMPLOYER OF THE STATUS OF RICCI AND MRS. RICCIARDI. THE EVIDENCE IS THAT COWLEY COMMENCED HIS EMPLOYMENT WITH THE RESPONDENT ON FEBRUARY 9TH, 1968.

10. BOTH RICCI AND MRS. RICCIARDI WORKED ON THE SECOND FLOOR OF THE BAKERY UNDER LUTHER BLOCK WHO IS A SUPERVISOR IN THE EMPLOY OF THE RESPONDENT. BOTH TESTIFIED THAT DURING THEIR EMPLOYMENT WITH THE RESPONDENT THERE WAS PLENTY OF STEADY WORK AND NEITHER WERE AWARE OF ANY LAY-OFFS. BOTH RICCI AND MRS. RICCIARDI ALSO TESTIFIED THAT BLOCK HAD ADVISED THEM THAT THE WORK LOAD WOULD BE INCREASING AS THE BAKERY WOULD BE STARTING TO MAKE HOT-CROSS BUNS FOR THE EASTER SEASON. MRS. RICCIARDI'S EVIDENCE IS THAT BLOCK EXPRESSED HIS SATISFACTION WITH HER WORK. RICCI TESTIFIED THAT HE WAS AWARE OF ONE EMPLOYEE, JOHN KENDALL, WHO WAS HIRED AFTER RICCI WAS STILL IN THE EMPLOY OF THE RESPONDENT.

11. RICCI'S EVIDENCE IS THAT IN THE EVENING OF FEBRUARY 9TH, DALEY TELEPHONED AND ADVISED HIM THAT HE WAS OVERSTAFFED AND THAT CONSEQUENTLY HE HAD TO LAY OFF RICCI, EFFECTIVE IMMEDIATELY. ON THAT OCCASION, ACCORDING TO RICCI, HE ASKED DALEY IF HE KNEW VICTOR COWLEY TO WHICH DALEY HAD REPLIED THAT HE HAD NEVER HEARD THE NAME. MRS. RICCIARDI TESTIFIED THAT DALEY TELEPHONED HER ON FEBRUARY 10TH AND TOLD HER THAT THINGS WERE GOING TO BE SLOW AND THAT HE THEREFORE WOULD HAVE TO "LAY HER OFF" FOR A COUPLE OF WEEKS. BOTH RICCI AND RICCIARDI STATED IN EVIDENCE THAT THEY EACH TELEPHONED DALEY ABOUT A WEEK LATER AND ASKED WHEN THEY WOULD BE RECALLED TO WORK. IN BOTH CASES, DALEY STATED THAT THE COMPANY HAD NO WORK AVAILABLE BUT THAT HE WOULD CALL THEM WHEN THEY WERE NEEDED.

12. BOTH RICCI AND MRS. RICCIARDI TESTIFIED THAT THEY WERE TELEPHONED BY DALEY AND ASKED TO COME TO THE PLANT. BOTH COMPLIED WITH HIS REQUEST AND ON MARCH 1ST, 1968 EACH MET SEPARATELY WITH DALEY AND BOYCE. THE EVIDENCE OF RICCI AND MRS. RICCIARDI IS THAT DALEY AND BOYCE ADVISED THEM THAT THEY HAD MADE FALSE STATEMENTS IN THEIR APPLICATIONS FOR EMPLOYMENT. BOTH RICCI AND MRS. RICCIARDI, ACCORDING TO THEIR TESTIMONY, WERE GIVEN THE OPTION OF SIGNING STATEMENT TO THE EFFECT THAT THEY HAD MADE THE FALSE STATEMENTS AND WERE ACCORDINGLY TERMINATING THEIR EMPLOYMENT OF THEIR OWN FREE WILL, OR ALTERNATIVELY BEING DISCHARGED BECAUSE OF THE FALSE STATEMENTS IN THEIR APPLICATIONS. BOTH RICCI AND MRS. RICCIARDI REFUSED TO SIGN THE STATEMENTS AND WERE DISCHARGED. THEIR DISCHARGE WAS CONFIRMED BY LETTERS DATED MARCH 4TH, 1968. ON MARCH 15TH, THE COMPLAINANT UNION FILED THE INSTANT COMPLAINT.

13. RICCI ADMITTED IN EVIDENCE THAT THE EMPLOYMENT HISTORY WHICH HE COMPLETED ON HIS APPLICATION FOR EMPLOYMENT IN DECEMBER OF 1967 WAS ALMOST TOTALLY FALSE. THE EMPLOYMENT HISTORY WHICH MRS. RICCIARDI COMPLETED ON HER APPLICATION WAS CORRECT. SHE STATED, HOWEVER, THAT HER REASON FOR LEAVING BROWN'S BREAD LIMITED WAS "NO TRANSPORTATION". MRS. RICCIARDI TESTIFIED THAT TRANSPORTATION DIFFICULTIES WERE, IN FACT, PART OF THE REASON FOR HER LEAVING BROWN'S BREAD.

14. THE EVIDENCE OF RICCI AND MRS. RICCIARDI, WHICH WAS NOT DISPUTED, IS THAT AT THE TIME OF THEIR LAY-OFFS ON FEBRUARY 9TH AND 10TH THERE WAS AMPLE WORK. MOREOVER, THEIR TESTIMONY AS TO THEIR CONVERSATION WITH THEIR FOREMAN LUTHER BLOCK SUGGESTS THAT THE RESPONDENT WAS ABOUT TO INCREASE ITS PRODUCTION ACTIVITY. FURTHER, THE FACT THAT RICCI AND MRS. RICCIARDI WERE "LAID OFF" IMMEDIATELY FOLLOWING THE ARRIVAL OF COWLEY ON THE SCENE, WHO WAS FULLY AWARE OF THEIR AFFILIATION WITH THE COMPLAINANT UNION, STRIKES US AS BEING MORE THAN COINCIDENTAL. ON THE BASIS OF ALL THE EVIDENCE, WE ARE SATISFIED THAT BOTH OF THE AGGRIEVED PERSONS WERE LAID OFF BECAUSE OF THEIR CONNECTION WITH THE COMPLAINANT. WE ARE SATISFIED ALSO THAT THE RESPONDENT WAS MOTIVATED TO DISCHARGE THEM ON MARCH 1ST, 1968 FOR THE SAME REASON AND NOT BECAUSE OF ANY FALSE STATEMENTS IN THEIR APPLICATIONS FOR EMPLOYMENT. IN OTHER WORDS, BY ITS ACTIONS IN RELATION TO THE AGGRIEVED PERSONS, THE RESPONDENT HAS CONTRAVENED SECTION 50 OF THE LABOUR RELATIONS ACT. WE WOULD ADD THAT WE FIND NO MERIT IN THE ARGUMENT OF COUNSEL FOR THE RESPONDENT THAT HAD THE RESPONDENT CONTINUED TO EMPLOY THE AGGRIEVED PERSONS UPON LEARNING THAT THEY HAD SECURED EMPLOYMENT WITH THE RESPONDENT PRIMARILY FOR PURPOSES OF ORGANIZING THE EMPLOYEES IN ITS BAKERY DIVISION, THE RESPONDENT WOULD HAVE BEEN ACTING IN CONTRAVENTION OF SECTION 48 OF THE ACT.

15. THE COMPLAINANT IS NOT SEEKING MONETARY COMPENSATION FOR ANY LOSS OF WAGES OR OTHER BENEFITS ON BEHALF OF THE AGGRIEVED PERSONS. THE REMAINING QUESTION IS WHETHER, IN ALL THE CIRCUMSTANCES, EITHER OR BOTH OF THEM ARE ENTITLED TO THE REMEDY WHICH THE COMPLAINANT IS SEEKING, NAMELY REINSTATEMENT. THE ONLY ISSUE BEFORE THE BOARD IN THIS COMPLAINT IS WHETHER THE AGGRIEVED PERSONS WERE DISCHARGED FOR THEIR UNION ACTIVITIES. HAVING FOUND THIS TO BE THE CASE, WHETHER THE RESPONDENT OTHERWISE WOULD HAVE BEEN JUSTIFIED IN DISCHARGING THEM FOR FALSE OR ALLEGEDLY FALSE STATEMENTS ON THEIR APPLICATIONS FOR EMPLOYMENT IS NOT A MATTER UPON WHICH THE BOARD IS CALLED UPON TO MAKE ANY DETERMINATION. FURTHER, DESPITE THE FACT THAT RICCI WAS A UNION ORGANIZER ON THE PAYROLL OF THE COMPLAINANT UNION AT ALL RELEVANT TIMES, HE WAS ALSO AN EMPLOYEE OF THE RESPONDENT ON THE DATE OF HIS DISCHARGE. SIMILARLY, NOTWITHSTANDING THE FACT THAT MRS. RICCIARDI WAS ON A LEAVE OF ABSENCE FROM BROWN'S BREAD LIMITED, SHE TOO WAS AN EMPLOYEE OF THE RESPONDENT ON THE DATE OF HER DISCHARGE. WE WOULD MENTION IN PASSING THAT

WE CAN SEE NO DIFFERENCE BETWEEN A TRADE UNION ENLISTING THE SERVICES OF AN EMPLOYEE ALREADY EMPLOYED BY AN EMPLOYER TO ASSIST IN AN ORGANIZING CAMPAIGN AND THE PRESENT SITUATION WHERE MRS. RICCIARDI UNDERTOOK TO ASSIST THE COMPLAINANT IN ITS ORGANIZING CAMPAIGN PRIOR TO HER BECOMING AN EMPLOYEE OF THE RESPONDENT.

16. HAVING REGARD TO ALL THE CIRCUMSTANCES, THE BOARD FINDS THAT THE AGGRIEVED PERSONS ARE ENTITLED TO REINSTATEMENT.

17. OUR DETERMINATION OF THE ACTION TO BE TAKEN BY THE RESPONDENT IS AS FOLLOWS:

THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY DOMENIC RICCI AND EVA RICCIARDI TO THE SAME OR LIKE EMPLOYMENT, THE SAME WAGES AND EMPLOYMENT BENEFITS AS THEY HAD AND RECEIVED PRIOR TO THEIR RESPECTIVE LAY-OFFS ON FEBRUARY 9TH AND 10TH, WHICH PRECEDED THEIR SUBSEQUENT DISCHARGES ON MARCH 1ST, 1968.

DECISION OF BOARD MEMBER F. W. MURRAY:

SEPTEMBER 3, 1968.

I DISSENT.

I AM OF THE OPINION THAT THE TWO COMPLAINANTS, NAMELY DOMENIC RICCI AND EVA RICCIARDI BECAUSE OF THEIR TOTAL STATUS WERE NOT EMPLOYEES OF THE RESPONDENT FOR PURPOSES OF THE ACT.

ON EXAMINATION OF ALL OF THE EVIDENCE, THERE IS, IN MY OPINION, VERY LITTLE DIFFERENCE IN THE RELATIVE ROLE AND POSITION OF THE TWO COMPLAINANTS. IN PRESENTING HER EVIDENCE, EVA RICCIARDI INDICATED THAT THERE WERE TWO REASONS FOR HER LEAVING BROWN'S BREAD LIMITED AND SEEKING EMPLOYMENT WITH THE A & P BAKERY, AND THEY WERE THAT SHE HAD CERTAIN TRANSPORTATION DIFFICULTIES WHILE WORKING FOR BROWN'S BREAD, AND THE SECOND REASON WAS THAT SHE WISHED TO ASSIST IN THE ORGANIZATION OF THE EMPLOYEES OF THE RESPONDENT. THE EVIDENCE WAS PRESENTED IN SUCH A MANNER SO AS TO LEAD THE BOARD TO BELIEVE THAT THE TRANSPORTATION WAS THE MAIN REASON AND THAT SHE INTENDED TO STAY ON IN THE EMPLOY OF THE RESPONDENT AND NOT RETURN TO HER FORMER EMPLOYMENT AT BROWN'S BREAD.

DURING THE EXAMINATION IN CHIEF MRS. RICCIARDI TESTIFIED THAT SHE HAD MR. GROCUTT, A REPRESENTATIVE OF THE COMPLAINANT UNION, ASK THE MANAGEMENT OF BROWN'S BREAD FOR A LEAVE OF ABSENCE ON HER BEHALF, AND THAT SHE ONLY TOLD HER FOREMAN THAT SHE WAS "GOING TO LOOK FOR ANOTHER JOB", AND THAT THERE WAS NO MORE TO HER LEAVING BROWN'S BREAD THAN THAT. HOWEVER, ON CROSS-EXAMINATION, SHE ADMITTED THAT SHE HAD DISCUSSED WITH MR. GROCUTT AND MR. RICCI, THE OTHER COMPLAINANT, IN MID-DECEMBER, THE POSSIBILITY OF HER GETTING A LEAVE OF ABSENCE AT BROWN'S BREAD AND ACQUIRING EMPLOYMENT

WITH THE RESPONDENT IN ORDER TO ASSIST IN THE ORGANIZATIONAL CAMPAIGN. SHE ALSO ADMITTED THAT HER TRANSPORTATION DIFFICULTIES WERE ON SUNDAYS ONLY, AND THAT SHE HAD MADE SPECIAL ARRANGEMENTS AT BROWN'S BREAD WITH RESPECT TO HER STARTING TIME ON SUNDAYS IN ORDER TO COPE WITH THESE ALLEGED TRANSPORTATION DIFFICULTIES.

MR. GROCUTT, ON THE OTHER HAND, TESTIFIED THAT HE TOLD MR. DOWNING OF BROWN'S BREAD LIMITED BY TELEPHONE, AS AGENT FOR MRS. RICCIARDI, HE WAS REQUESTING A THREE MONTHS' LEAVE OF ABSENCE FOR HER AND THAT THE COMPLAINANT UNION WAS "COMMENCING AN ORGANIZING CAMPAIGN AT ONE OF THE MAJOR BAKESHOPS IN TORONTO AND THAT WE WANTED EVA'S (EVA RICCIARDI) ASSISTANCE". NO EVIDENCE WAS ADDUCED TO SHOW THAT THE COMPLAINANT, AS AGENT, OR MRS. RICCIARDI HERSELF HAS EVER ADVISED BROWN'S BREAD LIMITED THAT, DESPITE HER LEAVE OF ABSENCE SHE WOULD NOT BE RETURNING TO HER FORMER EMPLOYMENT. HAVING REGARD TO ALL OF THIS EVIDENCE IN THIS MATTER, INCLUDING THE FACT THAT MRS. RICCIARDI HAD 8 YEARS SENIORITY WITH BROWN'S BREAD LIMITED, I WOULD CONCLUDE THAT MRS. RICCIARDI INTENDED TO RETURN TO HER EMPLOYMENT WITH BROWN'S BREAD AND I WOULD GIVE LITTLE OR NO CONSIDERATION TO THE TESTIMONY CONCERNING THE ALLEGED TRANSPORTATION DIFFICULTIES AS BEING A REASON FOR HER SEEKING STEADY EMPLOYMENT WITH THE RESPONDENT.

HER SUBSEQUENT ACTIVITIES AFTER HER LAY-OFF OR DISMISSAL WOULD ALSO INDICATE THAT HER INTENTION WAS TO ASSIST IN ORGANIZING THE EMPLOYEES AT A & P BAKERY AND TO REMAIN IN THE EMPLOY OF THE UNION OR RESPONDENT OR BOTH, UNTIL THAT MISSION WAS ACCOMPLISHED. IN THIS RESPECT HER EVIDENCE IN CROSS-EXAMINATION INDICATED THAT UP TO THE TIME OF THE HEARING, SHE HAD WORKED PART TIME FOR THE UNION, DOING BOTH OFFICE WORK AND ASSISTING IN THE ORGANIZATION OF THE EMPLOYEES OF THE RESPONDENT COMPANY.

HAVING REACHED THE ABOVE CONCLUSIONS, I BELIEVE THEREFORE THERE IS NO MEANINGFUL DIFFERENCE BETWEEN THE ROLE OF THE TWO COMPLAINANTS. DOMENIC RICCI OBTAINED EMPLOYMENT WITH THE RESPONDENT FOR THE SOLE PURPOSE OF ORGANIZING ITS EMPLOYEES AND INTENDED TO RETURN TO HIS FORMER POSITION AS SOON AS THE ORGANIZING CAMPAIGN WAS COMPLETED. EVA RICCIARDI'S POSITION IS IDENTICALLY THE SAME, EXCEPT THAT HER FORMER EARNINGS WERE NOT MAINTAINED BY THE COMPLAINANT UNION.

BOTH COMPLAINANTS, IN OBTAINING EMPLOYMENT WITH THE RESPONDENT, INTENDED TO, AND DID IN FACT, HAVE ANOTHER PURPOSE, OTHER THAN GAINFUL EMPLOYMENT. WHILE THEY WERE IN THE EMPLOY OF THE RESPONDENT COMPANY, THEY WERE SIMULTANEOUSLY EMPLOYED BY THE COMPLAINANT TRADE UNION, AND WERE IN ALL RESPECTS ACTING AS ITS AGENTS.

SECTION 48 OF THE ACT AND INDEED MANY OTHER SECTIONS CLEARLY ENCOURAGE THE MAINTENANCE OF AN ARM'S LENGTH RELATIONSHIP BETWEEN A TRADE UNION AND AN EMPLOYER, AT LEAST DURING THE ORGANIZING PERIOD, OR DURING A PERIOD WHEN EMPLOYEES ARE SELECTING A TRADE UNION TO REPRESENT THEM. HAVING REGARD TO THESE CONDITIONS OF THE ACT, I AM OF THE OPINION THAT PERSONS WHO SEEK AND GAIN TEMPORARY EMPLOYMENT WITH THE EMPLOYER FOR THE SOLE INTENT AND PURPOSE OF ORGANIZING THE EMPLOYEES OF THE EMPLOYER, AND WHO ARE AT ALL MATERIAL TIMES ACTING AS AN AGENT OF THE UNION, CANNOT SIMULTANEOUSLY BE EMPLOYEES OF THAT EMPLOYER FOR PURPOSES OF THE ACT.

FOR THESE REASONS I FIND THAT THE TWO PERSONS, DOMENIC RICCI AND EVA RICCIARDI WERE NOT EMPLOYEES OF THE RESPONDENT FOR PURPOSES OF THE ACT.

I THEREFORE DISAGREE WITH THE MAJORITY OF THE BOARD IN ARRIVING AT THE CONCLUSION THAT THE TWO PERSONS, DOMENIC RICCI AND EVA RICCIARDI WERE EMPLOYEES FOR PURPOSES OF THE ACT, HOWEVER THERE IS A SECOND MAJOR DISAGREEMENT I HAVE WITH THE MAJORITY DECISION AND THAT IS THAT EVEN IF THE COMPLAINANTS WERE EMPLOYEES FOR PURPOSES OF THE ACT AND THAT THE RESPONDENT HAD CONTRAVENED SECTION 50 OF THE LABOUR RELATIONS ACT, I WOULD HAVE, IN THE LIGHT OF ALL OF THESE CIRCUMSTANCES, AND OTHER PROVISIONS OF THE ACT, PARTICULARLY SECTION 48, EXERCISED THE DISCRETION GRANTED TO THE BOARD UNDER SECTION 65(4)(A) AND I WOULD HAVE DENIED RE-INSTATEMENT.

14859-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (COMPLAINANT) v. BEER PRECAST CONCRETE LIMITED, PIGOTT CONSTRUCTION COMPANY LIMITED, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCALS 721 AND 736 AND ALLAN MACISAAC (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. KOSKIE, M. LEVINE AND T. NEIL FOR THE THE COMPLAINANT; B. W. BINNING, W. PHELPS AND W. WHITE FOR BEER PRECAST CONCRETE LIMITED; A. J. CLARK AND D. H. STEVENS FOR PIGOTT CONSTRUCTION COMPANY LIMITED; AND A. E. GOLDEN, P. A. THOMAS, A. MACISAAC AND D. WEST FOR INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCALS 721 AND 736 AND ALLAN MACISAAC.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER E. BOYER: SEPTEMBER 11, 1968.

1. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSON, ANTONIO DASILVA HAS BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTIONS 37, 50(c) AND (b) AND 52 OF THE LABOUR RELATIONS ACT. MORE PARTICULARLY, THE COMPLAINANT ALLEGES THAT ON OR ABOUT JUNE 28TH, 1968 (OR JULY 2ND, 1968) AND JULY 10TH, 1968, TONY BELLUOMINI, A SUPERINTENDENT OF BEET PRECAST CONCRETE LIMITED (HEREINAFTER REFERRED TO AS BEER) DID ON BEHALF OF THE RESPONDENT BEER REFUSE TO EMPLOY OR CONTINUE TO EMPLOY THE AGGRIEVED PERSON AT THE DOMINION STORE PROJECT AT HIGHWAYS No. 5 AND 27, METROPOLITAN TORONTO, AND DISCRIMINATED AGAINST HIM IN THAT BELLUOMINI REFUSED TO PERMIT THE AGGRIEVED PERSON TO CONTINUE TO BE ENGAGED BY BEER BECAUSE HE WAS A MEMBER OF THE COMPLAINANT UNION AND NOT A MEMBER OF THE IRONWORKERS UNION. THE COMPLAINANT SUBMITS THAT THIS ACTION WAS IN CONTRAVENTION OF A COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND BEER WHEREIN THE LATTER IS REQUIRED TO EMPLOY MEMBERS OF THE COMPLAINANT TO PERFORM THE WORK WHICH THE AGGRIEVED PERSON WAS DOING PRIOR TO JUNE 28TH, 1968. THE COMPLAINANT FURTHER SUBMITS THAT THE OFFENCES OF BEER WERE UNLAWFULLY PROCURED BY THE CONDUCT AND ACTIVITIES OF THE OTHER RESPONDENTS IN THAT THEY CONSPIRED WITH EACH OTHER TO CAUSE BEER TO COMMIT THE SAID OFFENCES.

2. THE COMPLAINANT ALLEGED THE FOLLOWING ADDITIONAL STATEMENT OF FACTS. ON OR ABOUT MAY 24TH, 1968, BEER, IN ACCORDANCE WITH A SUB-CONTRACT WITH PIGOTT CONSTRUCTION COMPANY LIMITED (HEREINAFTER REFERRED TO AS PIGOTT), COMMENCED TO SUPPLY AND INSTALL PRECAST CONCRETE AT THE ABOVE REFERRED TO PROJECT. IN ACCORDANCE WITH ITS COLLECTIVE AGREEMENT WITH THE COMPLAINANT, BEER FIRST ENGAGED MEMBERS OF THE COMPLAINANT, INCLUDING THE AGGRIEVED PERSON, TO PERFORM THE SAID WORK. ON MAY 24TH, 1968, ABOUT EIGHT MEMBERS OF INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS (HEREINAFTER REFERRED TO AS IRON WORKERS), ENGAGED BY NADROFSKY STEEL ERECTORS AT THE PROJECT, REFUSED TO CONTINUE TO WORK THERE BECAUSE BEER WAS EMPLOYING MEMBERS OF THE COMPLAINANT INSTEAD OF IRON WORKERS TO ERECT PRECAST AT THE PROJECT. ON OR ABOUT MAY 29TH, 1968, DONALD STEVENS AND/OR VINCENT LYNCH AND/OR OTHERS ON BEHALF OF PIGOTT, AS A RESULT OF COERCION AND INTIMIDATION BY THE IRON WORKERS AND ALLAN MACISAAC, AN OFFICER AND/OR BUSINESS REPRESENTATIVE OF THE IRON WORKERS, INSISTED THAT BEER REMOVE FROM THE PROJECT TWO MEMBERS OF THE COMPLAINANT IN BEER'S EMPLOY AND REPLACE THEM WITH MEMBERS OF THE IRON WORKERS. ON OR ABOUT MAY 30TH, 1968, BEER REFUSED TO CONTINUE TO EMPLOY AT THE PROJECT TWO MEMBERS OF THE COMPLAINANT, WHO WERE REPLACED BY MEMBERS OF THE IRON WORKERS. AS A RESULT, THE TWO MEMBERS OF THE COMPLAINANT SUFFERED LOSS OF INCOME. ON OR ABOUT JUNE 5TH, 1968, DUE TO THE UNSATISFACTORY NATURE IN WHICH THE SAID TWO MEMBERS OF THE IRON WORKERS WERE PERFORMING THEIR DUTIES, THEY WERE REMOVED FROM THE PROJECT. ON OR ABOUT JUNE 7TH, 1968, AS A RESULT OF THE INSISTENCE OF DONALD STEVENS AND/OR VINCENT LYNCH AND/OR OTHERS ON BEHALF OF

PIGOTT, THE SAID TWO MEMBERS OF THE IRON WORKERS WERE ONCE AGAIN RE-EMPLOYED AT THE PROJECT. ON OR ABOUT JUNE 25TH, 1968, CERTAIN MEMBERS OF THE IRON WORKERS, ENGAGED IN PRECAST ERECTION AT THE PROJECT, REFUSED TO WORK BECAUSE BEER WAS STILL ENGAGING MEMBERS OF THE COMPLAINANT (INCLUDING THE AGGRIEVED PERSON) ON THE PROJECT AND ALSO BECAUSE BEER'S SUPERINTENDENT, BELLUOMINI, WAS NOT A MEMBER OF THE IRON WORKERS. SINCE THE IRON WORKERS REFUSED TO WORK WITH MEMBERS OF THE COMPLAINANT, IT WAS NECESSARY FOR BEER TO CEASE WORK ON THE PROJECT ON OR ABOUT JUNE 28TH, 1968. AS A RESULT, THE AGGRIEVED PERSON WAS LAID OFF BY BEER ON EITHER JUNE 28TH OR JULY 2ND, 1968. WORK ON THE PROJECT WAS RECOMMENCED BY BEER ON OR ABOUT JULY 10TH, 1968. NOTWITHSTANDING THIS FACT, BEER HAS REFUSED TO PERMIT THE AGGRIEVED PERSON TO WORK ON THE PROJECT BECAUSE HE IS A MEMBER OF THE COMPLAINANT AND NOT A MEMBER OF THE IRON WORKERS. ON OR ABOUT JULY 11TH, 1968, BELLUOMINI ADVISED REPRESENTATIVES OF THE COMPLAINANT THAT DONALD STEVENS AND/OR VINCENT LYNCH AND/OR OTHERS ON BEHALF OF PIGOTT HAD INFORMED BEER THAT THEIR SUB-CONTRACT WOULD BE CANCELLED IF BEER DID NOT ENGAGE MEMBERS OF THE IRON WORKERS, INSTEAD OF MEMBERS OF THE COMPLAINANT, TO WORK ON THE PROJECT. BELLUOMINI FURTHER STATED THAT BEER COULD NOT ENGAGE THE AGGRIEVED PERSON BECAUSE OF THE THREATS OF PIGOTT AND BECAUSE THE AGGRIEVED PERSON WAS NOT A MEMBER OF THE IRON WORKERS. THE ACTIONS AND CONDUCT OF PIGOTT WERE AS A RESULT OF PRESSURE AND THREATS FROM THE IRON WORKERS AND MACISAAC AGAINST PIGOTT. THE THREATS AND PRESSURE FROM THE IRON WORKERS AND MACISAAC AGAINST PIGOTT CONSISTED INTER ALIA OF THREATENING TO REMOVE FROM THE PROJECT AND OTHER PROJECTS OF PIGOTT MEMBERS OF THE IRON WORKERS EMPLOYED THEREON BY PIGOTT.

3. THE REMEDIES WHICH THE COMPLAINANT IS REQUESTING OF THE BOARD ARE AS FOLLOWS:

- (1) THE RESPONDENT BEER BE REQUIRED TO EMPLOY THE AGGRIEVED PERSON AT THE DOMINION STORE PROJECT AT HIGHWAYS NO. 5 AND NO. 27.
- (2) THE RESPONDENT BEER BE DIRECTED TO REFRAIN FROM REFUSING TO EMPLOY OR TO CONTINUE TO EMPLOY AND FROM DISCRIMINATING AGAINST THE AGGRIEVED PERSON BECAUSE HE IS A MEMBER OF THE COMPLAINANT.
- (3) THE RESPONDENT PIGOTT, THE IRON WORKERS AND ALLAN MACISAAC BE DIRECTED TO REFRAIN FROM:
 - (A) ALL ACTS OR CONDUCT CAUSING OR TENDING TO CAUSE BEER TO COMMIT THE OFFENCES REFERRED TO ABOVE,

(B) INTERFERING IN ANY WAY WHATSOEVER, EITHER DIRECTLY OR INDIRECTLY, WITH THE COLLECTIVE AGREEMENT OR COLLECTIVE BARGAINING RELATIONSHIP BETWEEN THE COMPLAINANT AND BEER, AND

(C) ENGAGING IN ANY CONDUCT OR DOING ANY ACTS WHATSOEVER, EITHER SEPARATELY OR IN CONCERT WITH EACH OTHER, RESULTING IN DISCRIMINATION AGAINST THE AGGRIEVED PERSON AS TO HIS EMPLOYMENT OR OPPORTUNITY FOR EMPLOYMENT WITH BEER.

(4) THE AGGRIEVED PERSON BE COMPENSATED BY THE RESPONDENTS OR ANY OF THEM FOR LOSS OF EARNINGS AND EMPLOYEE BENEFITS FROM JUNE 28TH, 1968 TO THE DATE OF HIS RE-EMPLOYMENT BY BEER.

4. ALL OF THE NAMED RESPONDENTS DENY THE ALLEGATIONS OF THE COMPLAINANT AND PUT THE COMPLAINANT TO THE STRICT PROOF THEREOF. THE RESPONDENT BEER SPECIFICALLY DENIES THAT THERE HAS BEEN ANY CONTRAVENTION OF ITS COLLECTIVE AGREEMENT WITH THE COMPLAINANT. BEER DENIES THAT IT REPLACED MEMBERS OF THE COMPLAINANT WITH MEMBERS OF THE IRON WORKERS. BEER ALLEGES, RATHER, THAT IT DID NOT AND HAS NOT HAD IN ITS EMPLOY AT THE DOMINION STORE PROJECT AT HIGHWAYS No. 5 AND No. 27 ANY MEMBERS OF THE IRON WORKERS.

5. THE RESPONDENT IRON WORKERS AND MACISAAC ALLEGE THAT THE SUBSTANCE OF THE COMPLAINT IS A JURISDICTIONAL DISPUTE AND THAT THE APPROPRIATE REMEDY FOR THE COMPLAINANT IS BY WAY OF A COMPLAINT UNDER SECTION 66 OF THE ACT. COUNSEL FOR PIGOTT SUBMITS THAT THE INSTANT COMPLAINT IS IDENTICAL TO THE COMPLAINT MADE IN THE GAMBIN BROTHERS LIMITED CASE (BOARD FILE No. 14741-68-U) THE DECISION IN WHICH ISSUED ON AUGUST 14TH, 1968. COUNSEL FOR PIGOTT, SUPPORTED BY COUNSEL FOR THE IRON WORKERS AND MACISAAC, ARGUE THAT, FOR THE REASONS SET OUT IN THAT DECISION, THE BOARD IS WITHOUT JURISDICTION TO DEAL WITH THE PRESENT COMPLAINT.

6. COUNSEL FOR THE COMPLAINANT SUBMITS THAT THE GAMBIN BROTHERS LIMITED CASE (SUPRA) IS DISTINGUISHABLE ON ITS FACTS, SINCE, IN THIS COMPLAINT, THE COLLECTIVE AGREEMENT BETWEEN THE COMPLAINANT AND BEER COVERS "ALL EMPLOYEES" OF BEER, WHEREAS THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE COMPLAINANT AND GAMBIN BROTHERS LIMITED ONLY COVERED LATHERS. COUNSEL FURTHER SUBMITS THAT BOTH THE GAMBIN BROTHERS LIMITED CASE (SUPRA) AND THE INSTANT COMPLAINT FALL WITHIN THE AMBIT OF THE "SPECIAL CIRCUMSTANCES" THAT EXISTED IN THE BOIVIN AND THE PLUMBERS ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 513, AND THE HAYES-DANA CASE, O.L.R.B. MONTHLY REPORT, APRIL 1968, P. 89. IN THOSE CASES THE BOARD IN ITS DISCRETION DEALT WITH COMPLAINTS WHICH WERE MADE UNDER SECTION 65 OF THE ACT. COUNSEL

ARGUES THAT THE DELIBERATE PROCURING BY PIGOTT, THE IRON WORKERS AND MAC ISAAC OF A BREACH OF A COLLECTIVE AGREEMENT ACCORDING TO THE BOIVIN CASE (SUPRA) IS CONTRARY TO THE ACT. COUNSEL ARGUES, MOREOVER, THAT THE LATTER NAMED RESPONDENTS HAVE CONTRAVENED SECTION 52 OF THE ACT AS IT IS THE RIGHT OF AN EMPLOYEE UNDER THE ACT TO WORK UNDER COLLECTIVE AGREEMENT, BINDING ON HIS EMPLOYER, WITHOUT INTERFERENCE. COUNSEL ALSO CITED SECTION 8 OF THE NATIONAL LABOR RELATIONS ACT AND A DECISION OF THE NATIONAL LABOR RELATIONS BOARD MADE UNDER THAT SECTION IN SUPPORT OF HIS POSITION. COUNSEL CLAIMS THAT THE AMERICAN LEGISLATION IN QUESTION IS ANALOGOUS TO AUTHORITY GIVEN TO THIS BOARD UNDER SECTION 65.

7. LET US ASSUME FOR PURPOSES OF ARGUMENT ONLY THAT THE COMPLAINANT CAN SUBSTANTIATE IN EVIDENCE ALL OF THE ALLEGED FACTS SET OUT IN ITS COMPLAINT. WHILE THE FACTS IN THEMSELVES ARE DIFFERENT, THE SITUATION AND THE REMEDIES SOUGHT BY THE COMPLAINANT ARE VIRTUALLY IDENTICAL TO THOSE IN GAMBIN BROTHERS LIMITED (SUPRA)

8. WE FAIL TO SEE THAT THERE IS ANY SIGNIFICANT DIFFERENCE IN THESE TWO SITUATIONS BY REASON OF THE FACT THAT THE COMPLAINANT HERE HAS AN "ALL EMPLOYEE" COLLECTIVE AGREEMENT WITH BEER. IN THE GAMBIN BROTHERS LIMITED CASE (SUPRA) ADOPTING THE PRINCIPLES SET OUT IN THE WALLACE BARNES COMPANY LIMITED CASE, 61 C.L.L.C. 928, AND THE NATIONAL SHOWCASE CO. LTD. CASE, 61 C.L.L.C. 901, THE BOARD HELD THAT WHERE THERE IS A REMEDY UNDER A COLLECTIVE AGREEMENT AVAILABLE TO THE PARTIES, THE BOARD WILL NOT ENTERTAIN A COMPLAINT MADE UNDER SECTION 65, EXCEPT IN SPECIAL CIRCUMSTANCES. THE BOARD CONSIDERED OTHER CASES IN WHICH COMPLAINTS WERE MADE UNDER SECTION 65 AND THE ISSUE OF THE EXERCISE OF THE BOARD'S DISCRETION WAS RAISED, INCLUDING THE BOIVIN CASE (SUPRA) AND FOUND NO REASON TO DEPART FROM ITS ESTABLISHED POLICY. WE WOULD POINT OUT THAT IN THE BOIVIN CASE (SUPRA) THE ALLEGATION WAS THAT A TRADE UNION, WHICH WAS A PARTY TO A COLLECTIVE AGREEMENT WITH AN EMPLOYER, ITSELF WRONGLY PROCURED THE DISCHARGE OF THE COMPLAINANT. THE BOARD FOUND THAT, ALTHOUGH AN ALTERNATIVE REMEDY EXISTED UNDER THE GRIEVANCE AND ARBITRATION PROVISIONS OF THE AGREEMENT, SINCE THE UNION HAD PROCURED THE DISCHARGE OF THE EMPLOYEE, IT WOULD BE UNREASONABLE TO EXPECT IT THEN TO CARRY THAT CASE THROUGH THE ARBITRATION PROCESS ON THE EMPLOYEE'S BEHALF. THIS ABOVE PARTICULAR SET OF CIRCUMSTANCES IS ENTIRELY ABSENT IN THE INSTANT CASE. FURTHER, WITHOUT ATTEMPTING TO OUTLINE THE NATURE OF THE COMPLAINT IN THE HAYES-DANA CASE (SUPRA) WHERE THE BOARD DEALT WITH THE COMPLAINT DESPITE THE FACT THAT AN ARBITRATION PROCEEDING HAD BEEN COMMENCED, WE SEE NO SIMILARITY BETWEEN THAT CASE AND THE INSTANT COMPLAINT. WE WOULD ADD HERE THE AMERICAN LEGISLATION AND AUTHORITY CITED ARE SUFFICIENTLY DIFFERENT THAT NO ANALOGY CAN BE DRAWN WHICH LENDS SUPPORT TO THE

POSITION OF THE COMPLAINANT. AS IN THE GAMBIN BROTHERS LIMITED CASE (SUPRA) THE REMEDY SOUGHT BY THE COMPLAINANT WITH RESPECT TO BEER IS AVAILABLE THROUGH THE GRIEVANCE AND ARBITRATION PROCESS CONTAINED IN THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THEM. ACCORDINGLY, THE BOARD, IN THE EXERCISE OF ITS DISCRETION, IS NOT PREPARED TO ENTERTAIN THE INSTANT COMPLAINT AS IT RELATES TO BEER.

9. COUNSEL FOR THE COMPLAINANT ARGUES THAT THE BOIVIN CASE STANDS FOR THE PROPOSITION THAT SECTION 65 DOES NOT REQUIRE AS A CONDITION OF RELIEF THAT THE CONDUCT COMPLAINED OF CONSTITUTES AN "OFFENCE" WHICH MIGHT BE THE SUBJECT OF PROSECUTION. WE DO NOT DISPUTE COUNSEL'S INTERPRETATION OF THE BOIVIN CASE. HOWEVER, IT IS CLEAR FROM A READING OF THAT DECISION THAT THE BOARD DEALT WITH THE COMPLAINT BECAUSE IT WAS ALLEGED THAT ONE OF THE PARTIES TO THE COLLECTIVE AGREEMENT IN THAT CASE HAD DELIBERATELY PROCURED A WRONGFUL BREACH OF THE COLLECTIVE AGREEMENT BY THE OTHER PARTY, AND BY SO DOING, HAD ACTED CONTRARY TO SECTION 37 OF THE ACT. IN THE INSTANT CASE, AS IN THE GAMBIN BROTHERS LIMITED CASE (SUPRA) IT IS THE REMAINING RESPONDENTS, ALL THIRD PARTIES, WHO ARE ALLEGED TO HAVE DELIBERATELY PROCURED A WRONGFUL BREACH OF A COLLECTIVE AGREEMENT. AS WAS STATED IN THE ABOVE CITED CASE, ONLY ONE OF THE PARTIES TO A COLLECTIVE AGREEMENT CAN ACT IN BREACH OF THE AGREEMENT AND THEREFORE FAIL TO COMPLY WITH SECTION 37. IN OTHER WORDS, THE FACTS OF THE BOIVIN CASE (SUPRA) ARE DISTINGUISHABLE FROM THOSE BEFORE THE BOARD IN THE INSTANT CASE. WE WOULD POINT OUT THAT THE VIEWS EXPRESSED BY THE BOARD IN THE LATTER CASE RELATING TO THE BREACH OF A COLLECTIVE AGREEMENT WERE SPECIFICALLY CONFINED TO THE CIRCUMSTANCES OF THAT CASE.

10. WITH REGARD TO THE ALLEGED VIOLATIONS OF SECTION 50, THE VIEWS EXPRESSED IN THE GAMBIN BROTHERS LIMITED CASE (SUPRA) APPLY HERE. THAT IS TO SAY, ONLY AN EMPLOYER OR A PERSON ACTING ON BEHALF OF THE EMPLOYER CAN VIOLATE THAT SECTION. THE RESPONDENTS PIGOTT, THE IRON WORKERS AND MAC ISAAC WERE NOT ACTING IN THE ROLE OF AGENT FOR BEER. WITH REFERENCE TO SECTION 52, WE DO NOT ACCEPT THE ARGUMENT THAT THERE IS A RIGHT ESTABLISHED UNDER THE ACT WHEREBY AN EMPLOYEE IS GUARANTEED EMPLOYMENT IN THE MANNER SUGGESTED BY COUNSEL FOR THE COMPLAINANT BY VIRTUE OF THE FACT THAT HIS EMPLOYER HAS A BINDING COLLECTIVE AGREEMENT WITH A TRADE UNION.

11. WE ACCORDINGLY FIND THAT, WITH RESPECT TO THE LATTER THREE NAMED RESPONDENTS, THE COMPLAINANT HAS NOT ESTABLISHED A PRIMA FACIE CASE TO SUPPORT ITS ALLEGATIONS THAT THE RESPONDENTS CONCERNED HAVE ACTED CONTRARY TO THOSE SECTIONS OF THE ACT ALLEGED TO HAVE BEEN CONTRAVENED IN THE COMPLAINT. ACCORDINGLY, FOR THE SAME REASONS GIVEN IN THE GAMBIN BROTHERS LIMITED CASE (SUPRA) THE BOARD FINDS THAT, IN THIS COMPLAINT, IT DOES NOT HAVE THE JURISDICTION UNDER SECTION 65 TO ISSUE THE ORDERS AFFECTING PIGOTT, THE IRON WORKERS AND MACISAAC SOUGHT BY THE COMPLAINANT.

12. AGAIN, AS IN THE GAMBIN BROTHERS LIMITED CASE (SUPRA) THE REAL PROBLEM INVOLVED IN THIS COMPLAINT IS A JURISDICTION OR WORK ASSIGNMENT DISPUTE. IF THE REMEDIES AGAINST THE LATTER THREE RESPONDENTS WHICH THE COMPLAINANT IS SEEKING ARE AVAILABLE UNDER THE ACT, IT IS BY WAY OF A COMPLAINT MADE UNDER SECTION 66.

13. THE COMPLAINT, ACCORDINGLY, IS DISMISSED.

DECISION OF BOARD MEMBER R. W. TEAGLE: SEPTEMBER 11, 1968.

I DISAGREE WITH THE MAJORITY DECISION THAT IT WILL NOT ENTERTAIN THIS APPLICATION UNDER SECTION 65.

FOR THE REASONS GIVEN IN MY DISSENT IN THE GAMBIN BROTHERS LIMITED CASE I WOULD FIND THAT PIGOTT CONSTRUCTION WERE ACTING AS AGENTS FOR THE IRONWORKERS AND MACISAAC, AND PROCESS THIS APPLICATION. A PROCEDURE BY WAY OF ARBITRATION AND AGAIN UNDER SECTION 66 WILL NOT GIVE ALL THE RELIEF SOUGHT.

THE RELIEF SOUGHT IN THIS CASE HAS BEEN SET OUT IN THE MAJORITY DECISION ON PAGE THREE, PARAGRAPH 3.

RELIEF MAY BE SOUGHT BY WAY OF ARBITRATION FOR ITEMS (1), (2) AND (4) OF PARAGRAPH 3. THE RELIEF SOUGHT IN ITEMS 3(A), 3(B) AND 3(C) CANNOT BE DEALT WITH BY AN APPLICATION UNDER SECTION 66 AS A CEASE AND DESIST ORDER UNDER 66(3) ONLY COVERS THE FOLLOWING:

"...TO CEASE AND DESIST FROM DOING ANYTHING INTENDED OR LIKELY TO INTERFERE WITH THE TERMS OF AN INTERIM ORDER OR DIRECTION RESPECTING THE ASSIGNMENT OF WORK"

THE RELIEF SOUGHT IN ITEM 3 OF PARAGRAPH 3 IS FOR THE UNLAWFUL ACTION TAKEN BY THE RESPONDENTS IN ATTEMPTING TO ASSERT JURISDICTION OVER THE WORK ASSIGNMENT RATHER THAN TAKING THE LAWFUL PROCEDURE OF MAKING AN APPLICATION UNDER SECTION 66 IF THEY FELT THE WORK BELONGED TO THEM. THIS POINT SEEMS TO BE IGNORED BY THE MAJORITY DECISION, AND ONLY UNDER SECTION 65 CAN THIS RELIEF BE GRANTED.

IT SEEMS A CUMBERSOME PROCEDURE THAT THE APPLICANT IN ORDER TO OBTAIN THE RELIEF SOUGHT MUST TAKE SEVERAL DIFFERENT COURSES INCURRING CONSIDERABLE EXPENSE AND DELAY WHEN ALL ARE AVAILABLE UNDER ONE APPLICATION UNDER SECTION 65 AND, FURTHER, THE SUBJECT OF THE SECTION 66 APPLICATION MAY BE COMPLETED BEFORE THE BOARD HAS HAD AN OPPORTUNITY TO CONSIDER THE MATTER.

IN MY OPINION THE BOARD IS ABDICATING ITS JURISDICTION WHEN IT FAILS TO PROCEED WITH THIS APPLICATION.

14890-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. SONCO
TUBE LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT HEARING: J. H. OSLER, Q.C., AND FORTUNATO RAO
FOR THE APPLICANT; AND H.R. NATHAN FOR THE RESPONDENT.

DECISION OF VICE-CHAIRMAN RORY F. EGAN, AND BOARD MEMBER
O. HODGES: SEPTEMBER 12, 1968.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 65 OF THE ACT. THE COMPLAINANT STATES THAT AURELLE LABELLE WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 50(A) OF THE LABOUR RELATIONS ACT. IT IS ALLEGED THAT S. DEMASI, A FOREMAN OF THE RESPONDENT, DISCHARGED THE AGGRIEVED AURELLE LABELLE BECAUSE HE WAS A MEMBER OF THE COMPLAINANT TRADE UNION, OR HAD EXPRESSED HIS INTENTION OF BECOMING SUCH, OR WAS EXERCISING OTHER RIGHTS UNDER THE LABOUR RELATIONS ACT. THE DISCHARGE TOOK PLACE ON JULY 22ND, 1968.
2. ON JULY 22ND, 1968, THE AGGRIEVED WAS ON THE DAY SHIFT, WHICH COMMENCED AT 7 A.M. HE PUNCHED IN AT 8:38 AND REPORTED TO HIS FOREMAN, DEMASI. HE OFFERED A REASON FOR HIS LATENESS, BUT THIS, OBVIOUSLY, DID NOT AFFECT THE OUTCOME. THERE IS SOME CONFLICT AS TO PRECISELY WHAT FOLLOWED, BUT THE RESULT WAS THAT AFTER AN INTERVIEW WITH DAVID SONSHINE, THE PLANT MANAGER, WHO REFERRED HIM BACK TO DEMASI, THE GRIEVOR WAS DISCHARGED BY DEMASI. SONSHINE MADE REFERENCE TO THE AGGRIEVED COMING IN LATE AND NOT STAYING AT HIS MACHINE. IT WAS DEMASI'S EVIDENCE, HOWEVER, THAT THE DISCHARGE WAS FOR LATENESS.
3. THE COMPANY TOOK THE POSITION THAT THE DISCHARGE OF THE AGGRIEVED WAS BASED NOT ONLY UPON THIS INCIDENT BUT ALSO ON THE FACT THAT HE HAD A HISTORY OF LATENESS CONCERNING WHICH HE HAD BEEN WARNED. THE ADDITIONAL GROUNDS WERE THAT HE HAD BEEN FREQUENTLY ABSENT FROM HIS MACHINE. EVIDENCE WAS GIVEN ON BEHALF OF THE COMPANY BY DEMASI AND SONSHINE.
4. DEMASI TESTIFIED THAT THE AGGRIEVED HAD BEEN UNDER HIS JURISDICTION SINCE ABOUT MARCH, 1968 - HE WAS NOT QUITE SURE OF THE DATE. HIS TESTIMONY AS TO CHRONIC LATENESS WENT ONLY SO FAR AS THE STATEMENT THAT LABELLE "WAS A FEW TIMES LATE". SOME OF THE AGGRIEVED'S TIME CARDS WERE PRODUCED BY THE COMPANY AND ONE OF THESE INDICATED THAT ON APRIL 27TH, 1968, THE AGGRIEVED HAD PUNCHED IN FOR THE DAY SHIFT AT 7:01 A.M. THE CARDS ALSO INDICATED THAT IN FEBRUARY THE AGGRIEVED HAD PUNCHED IN AT 4:01. DEMASI WAS OF THE BELIEF THAT LABELLE HAD NOT COME UNDER HIS JURISDICTION UNTIL SOME TIME IN MARCH. HIS TESTIMONY THEREFORE ESTABLISHES ONLY THAT LABELLE WAS LATE ONCE BETWEEN MARCH AND THE DATE

OF HIS DISCHARGE ON JULY 22ND, 1968, AND THAT LATENESS OCCURRED SOME TWO MONTHS PRIOR TO THE DISCHARGE.

5. OTHER TIME CARDS WERE PRODUCED BY THE COMPANY REACHING BACK TO FEBRUARY, 1967, IN SUPPORT OF ITS CLAIM THAT THE AGGRIEVED WAS HABITUALLY LATE. THE CARDS SHOW THAT BETWEEN FEBRUARY AND OCTOBER, 1967, LABELLE WAS LATE EIGHT TIMES FOR A TOTAL OF THREE HOURS AND ELEVEN MINUTES. ON ONE OF THESE OCCASSIONS HE WAS ALSO WELL OVER AN HOUR LATE, BUT NO DISCIPLINARY ACTION FOLLOWED AS IT DID FOR THE LATER, SIMILAR INCIDENT FOR WHICH IT IS SAID HE WAS DISCHARGED. WHATEVER MAY BE SAID ABOUT THE AGGRIEVED'S LATENESS WHILE UNDER DEMASI'S DIRECT SUPERVISION, IT IS QUITE CLEAR THAT THE INCIDENTS REFERRED TO IN THE TIME CARDS COVERING 1967 WERE NOT IN HIS MIND AT THE TIME HE DISCHARGED LABELLE BUT WERE BROUGHT TO HIS KNOWLEDGE AFTER THE DISCHARGE AND CONSTITUTE, IN OUR OPINION, AN ATTEMPT TO BOLSTER THE CASE FOR DISCHARGE WITH OCCURRENCES NOT TAKEN INTO CONSIDERATION AT THE TIME. THERE IS NO QUESTION BUT THAT LABELLE WAS SPOKEN TO BE DEMASI ABOUT BEING LATE, BUT NOTHING IN THE WAY OF A WARNING OF FUTURE DISCIPLINARY ACTION WAS ESTABLISHED.

6. THE UNION WAS CERTIFIED BY THE ONTARIO LABOUR RELATIONS BOARD ON THE 5TH DAY OF JULY, 1968. LABELLE TESTIFIED THAT HE TOOK NO ACTIVE PART IN THE ORGANIZATIONAL DRIVE WHICH PRECEDED THE CERTIFICATION. HE WAS, HOWEVER, ACTIVE FOLLOWING THAT EVENT. ON JULY 14TH, 1968, LABELLE WAS ELECTED TO THE NEGOTIATING COMMITTEE OF THE UNION. HE THEN COMMENCED TO ATTEMPT TO SIGN UP AS MEMBERS OF THE UNION THOSE EMPLOYEES WHO HAD NOT YET JOINED. HIS DISCHARGE, AS NOTED, TOOK PLACE ON JULY 22ND, 1968.

7. DEMASI TESTIFIED THAT HE WAS NOT AWARE OF ANY UNION ACTIVITY IN THE PLANT UNTIL TWO WEEKS AFTER HE HAD DISCHARGED LABELLE AND, OF COURSE, THAT HE WAS UNAWARE OF ANY PART LABELLE MIGHT HAVE PLAYED ON BEHALF OF THE UNION. WE FIND IT HARD TO BELIEVE THAT A FOREMAN IN A PLANT OF THE SIZE OF THE RESPONDENT'S WOULD NOT BE AWARE OF ORGANIZATIONAL ACTIVITIES BEING CARRIED ON BY A UNION. PART OF THE PROCEDURE REQUIRED BY THE BOARD ON AN APPLICATION FOR CERTIFICATION IS THAT A NOTICE BE POSTED IN THE PLANT CONCERNED ADVISING THE EMPLOYEES OF THE APPLICATION AND THEIR RIGHTS WITH RESPECT THERETO. DEMASI STATES HE SAW NO SUCH NOTICE ALTHOUGH THE BOARD REQUIRES PROOF OF ITS POSTING BEFORE PROCEEDING WITH AN APPLICATION. THERE WAS NO SUGGESTION THAT THE REQUIREMENTS WERE NOT FULFILLED IN THIS CASE; AND WE ARE ENTITLED TO ASSUME THAT THEY WERE, SINCE THE CERTIFICATION WAS GRANTED. BE THAT AS IT MAY, IT SIMPLY DEFIES BELIEF THAT DEMASI WAS UNAWARE OF THE UNION'S PRESENCE IN THE PLANT FOLLOWING ITS CERTIFICATION. IT IS INCREDIBLE THAT HE COULD HAVE BEEN SO COMPLETELY UNAWARE OF THE SITUATION AS HE WOULD HAVE THE BOARD BELIEVE. IN OUR OPINION, DEMASI WAS DELIBERATELY ATTEMPTING TO MISLEAD THE BOARD IN AN EFFORT TO DIVERT ITS ATTENTION FROM

THE TRUE MOTIVE UNDERLYING THE DISCHARGE BY DISCLAIMING ALL KNOWLEDGE OF THE UNION'S ORGANIZATIONAL CAMPAIGN AND ITS RESULT-
ANT CERTIFICATION. WE CANNOT ACCEPT THAT EVIDENCE, AND WE CANNOT
ACCEPT HIS EVIDENCE THAT HE WAS UNAWARE OF LABELLE'S EFFORTS ON
BEHALF OF THE UNION.

8. FURTHERMORE, THE EVIDENCE WITH RESPECT TO THE EMPLOYEE'S
HISTORY AS PRESENTED BY THE COMPANY EXTENDED OVER A PERIOD OF ALMOST
TWO YEARS AND INCLUDED A LATE ARRIVAL EXCEEDING ONE HOUR, ALL OF
WHICH WAS TOLERATED BY THE COMPANY WITHOUT DISCIPLINE. THAT DISCI-
PLINE WAS IMPOSED FOR A SIMILAR OCCURRENCE FOLLOWING LABELLE'S
UNION ACTIVITY STRENGTHENS OUR BELIEF THAT DEMASI, WITH THE CON-
CURRENCE AND APPROVAL OF SONSHINE, DISCHARGED THE GRIEVOR CONTRARY
TO THE PROVISIONS OF THE LABOUR RELATIONS ACT, AND WE SO FIND.

9. THE BOARD THEREFORE DIRECTS THE RESPONDENT AS FOLLOWS:

- 1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY
AURELLE LABELLE IN THE SAME OR LIKE EMPLOYMENT WITH
THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD
AND RECEIVED PRIOR TO JULY 22ND, 1968;
- 2) AS COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT
BENEFITS FROM JULY 22ND, 1968, TO AND INCLUDING
AUGUST 27TH, 1968, THE RESPONDENT SHALL FORTHWITH
PAY AURELLE LABELLE THE SUM OF \$391.59;
- 3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTH-
WITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS
OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW
SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY
AURELLE LABELLE BETWEEN THE DATE OF THE HEARING ON
AUGUST 27TH, 1968, AND THE DATE OF HIS ACTUAL RE-
EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN
AGREEMENT BETWEEN THE PARTIES WITHIN SEVEN DAYS
AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN
SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY
AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPEN-
SATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE
BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER
HEARING FOR THAT PURPOSE.

DISSENT OF BOARD MEMBER H. F. IRWIN:

SEPTEMBER 12, 1968.

1. I DISSENT.

2. THIS IS AN APPLICATION UNDER SECTION 65 OF THE LABOUR
RELATIONS ACT. THE COMPLAINANT, UNITED STEELWORKERS OF AMERICA,
ALLEGES THAT AURELLE LABELLE, THE AGGRIEVED EMPLOYEE, WAS DEALT
WITH BY THE RESPONDENT COMPANY, SONCO TUBE LIMITED, CONTRARY TO
THE PROVISIONS OF SECTION 50(A) OF THE ACT IN THAT THE RESPONDENT

REFUSED TO CONTINUE TO EMPLOY LABELLE BECAUSE HE WAS A MEMBER OF THE COMPLAINANT TRADE UNION OR WAS EXERCISING OTHER RIGHTS UNDER THE ACT.

3. AT THE HEARING BEFORE THE BOARD, S. DEMASI, LABELLE'S FOREMAN, TESTIFIED UNDER OATH THAT HE DISCHARGED LABELLE FOR LATENESS. ON JULY 22ND, 1968, LABELLE WAS WORKING ON THE DAY SHIFT WHICH COMMENCED AT 7:00 A.M. HIS TIME CARD SHOWS THAT HE PUNCHED IN AT 8:30 A.M., AND ACCORDING TO LABELLE HE REPORTED IN FORTHWITH AND WAS INFORMED THAT HE WAS BEING DISCHARGED FOR BEING LATE.

4. LABELLE OPERATES ONE OF THE SIX MILL MACHINES LOCATED IN THE PLANT. HIS CLASSIFICATION IS MILL OPERATOR AND HE IS RESPONSIBLE FOR THE OPERATION OF THIS MACHINE FOR WHICH HE IS PAID \$2.85 PER HOUR. HE HAS UNDER HIS SUPERVISION A CUT-OFF MAN BUT THE MACHINE MUST NOT BE STARTED AT THE COMMENCEMENT OF HIS SHIFT UNTIL LABELLE ARRIVES UNLESS IT IS DONE UNDER THE DIRECTION OF THE FOREMAN. ON JULY 22ND, THE FOREMAN GOT THE MILL STARTED AT 8:00 O'CLOCK WHICH MEANT THAT ONE HOUR'S PRODUCTION WAS LOST BECAUSE OF LABELLE'S LATENESS.

5. DEMASI INFORMED THE BOARD THAT HE HAD THE AUTHORITY TO DISCHARGE AN EMPLOYEE UNDER HIS SUPERVISION WITHOUT CONSULTATION WITH OTHER OFFICIALS AND HE SO DISCHARGED LABELLE FOR BEING LATE ON JULY 22ND. LABELLE ADMITTED HE HAD BEEN PREVIOUSLY WARNED BY DEMASI IN RESPECT OF HIS LATENESS BUT NO DISCIPLINARY ACTION OTHER THAN THE WARNING ITSELF WAS TAKEN AT THE TIME. THE COMPLAINANT MAKES MUCH OF THE FACT THAT ON A PREVIOUS OCCASION LABELLE WAS JUST ONE MINUTE LATE AS HE PUNCHED IN AT 7:01 A.M. LABELLE ADMITTED IT WOULD TAKE AT LEAST AN ADDITIONAL TEN MINUTES TO CHANGE INTO HIS WORK CLOTHES. THIS MEANS THAT LABELLE WAS AT LEAST ELEVEN MINUTES LATE ON THAT OCCASION.

6. THIS IS NOT AN ARBITRATION BOARD DEALING WITH THE JUSTIFICATION OF LABELLE'S DISMISSAL. NO COLLECTIVE AGREEMENT IS IN OPERATION AND DEMASI WAS ACTING WITHIN HIS RIGHTS IN DISCHARGING LABELLE FOR LATENESS. THE ONLY CONCERN OF THIS BOARD IS WHETHER OR NOT THE DISMISSAL WAS MADE PRIMARILY BECAUSE OF LABELLE'S MEMBERSHIP IN AND ACTIVITIES ON BEHALF OF THE COMPLAINANT TRADE UNION RATHER THAN HIS BEING ONE HOUR AND THIRTY-EIGHT MINUTES LATE FOR WORK ON JULY 22ND LAST.

7. LABELLE TESTIFIED THAT HE HAD TAKEN NO PART WHATEVER IN THE UNION'S ORGANIZATIONAL CAMPAIGN PRIOR TO THE UNION BEING CERTIFIED AS BARGAINING AGENT FOR THE PLANT EMPLOYEES OF THE RESPONDENT ON JULY 5TH, 1968. ON JULY 14TH, LABELLE WAS ELECTED AS A MEMBER OF THE UNION'S NEGOTIATING COMMITTEE REPRESENTING THE CANADIAN EMPLOYEES IN THE PLANT. THE EVIDENCE IS CLEAR THAT NO BARGAINING HAD TAKEN PLACE AND THAT THE UNION HAD NOT EVEN ADVISED

THE RESPONDENT COMPANY AS TO THE NAMES OF THE EMPLOYEES WHO WOULD ACT ON THE UNION'S BARGAINING COMMITTEE. LABELLE TESTIFIED THAT THOUGH HE HAD TALKED WITH DAVID SONSHINE, PLANT MANAGER, AT THE LATTER'S HOME THE PREVIOUS SUNDAY, THE MATTER OF THE UNION WAS NOT MENTIONED IN ANY WAY. THERE ISN'T A SCRAP OF EVIDENCE THAT EITHER SONSHINE OR DEMASI KNEW OF LABELLE'S ELECTION AS A MEMBER OF THE UNION'S BARGAINING COMMITTEE. THERE WAS ALSO NO EVIDENCE THAT EITHER SONSHINE OR DEMASI KNEW THAT LABELLE WAS SIGNING UP EMPLOYEES AS UNION MEMBERS FROM JULY 14TH, TO JULY 21ST, 1968. MOREOVER, BOTH SONSHINE AND DEMASI TESTIFIED THAT THEY HAD NO KNOWLEDGE WHATSOEVER THAT LABELLE WAS A MEMBER OF THE UNION. SONSHINE STATED THAT HE DID KNOW THE NAMES OF OTHER EMPLOYEES WHO WERE ACTIVELY ENGAGED IN THE UNION'S ORGANIZATIONAL CAMPAIGN AND ALL OF THESE EMPLOYEES ARE STILL WORKING FOR THE COMPANY.

8. DURING THE COURSE OF THE HEARING I ASKED DEMASI IF HE HAD SEEN THE BOARD'S GREEN COLOURED NOTICE TO EMPLOYEES POSTED IN THE PLANT. HE STATED THAT HE HAD NOT SEEN SUCH A NOTICE. NO EVIDENCE WAS ADDUCED AT THE HEARING IN THE INSTANT CASE THAT THE BOARD'S GREEN COLOURED NOTICE TO EMPLOYEES (FORM 5) WAS POSTED IN THE PLANT OF THE RESPONDENT FOLLOWING THE FILING OF THE APPLICATION FOR CERTIFICATION BY THE COMPLAINANT UNION. IN THE JOHNSON, PERINI, KIEWIT CASE, O.L.R.B. MONTHLY REPORT, JUNE 1961, P. 94, THE BOARD STATED:

THE BOARD IS A QUASI-JUDICIAL BODY AND MUST PROCEED
ON THE EVIDENCE ADDUCED AT THE HEARING. (EMPHASIS ADDED.)

CONSEQUENTLY, IT WOULD BE BOTH IMPROPER AS WELL AS CONTRARY TO ESTABLISHED BOARD POLICY TO PROCEED ON THE ASSUMPTION THAT THIS NOTICE WAS POSTED AND THEN DRAW CONCLUSIONS FROM SUCH ASSUMPTION.

9. ON THE EVIDENCE ADDUCED AT THE HEARING IN THIS MATTER, I MUST FIND THAT THE COMPLAINANT TRADE UNION HAS NOT DISCHARGED THE HEAVY ONUS RESTING UPON IT TO ESTABLISH THAT THE COMPANY OFFICIALS CONCERNED KNEW OF LABELLE'S MEMBERSHIP IN THE TRADE UNION, OF HIS UNION ACTIVITY BETWEEN JULY 14TH AND 21ST, 1968, OR THAT HE WAS DISMISSED FROM HIS EMPLOYMENT WITH THE RESPONDENT BECAUSE OF SUCH MEMBERSHIP AND ACTIVITY CONTRARY TO SECTION 50(A) OF THE LABOUR RELATIONS ACT. FOR THESE REASONS, I WOULD HAVE DISMISSED THE COMPLAINT. I HASTEN TO ADD, HOWEVER, THAT IF I HAD FOUND THAT THE RESPONDENT DISMISSED LABELLE FOR SUCH UNION ACTIVITY, I WOULD HAVE REINSTATED HIM PROMPTLY BUT ANY COMPENSATION DUE HIM WOULD BE DIMINISHED BY THE AMOUNT OF FINANCIAL LOSS TO THE COMPANY RESULTING FROM LOSS OF PRODUCTION AND SERVICES OF OTHER EMPLOYEES DUE TO LABELLE'S LATENESS.

INDEXED ENDORSEMENTS - SECTION 47A

14965-68-M: BAKERY & CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 284, FORT WM-PORT ARTHUR (APPLICANT) V. MCGAVIN TOASTMASTER LIMITED, AND SHAW BAKING COMPANY LIMITED (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: W.T. WHITE AND J.H. REID FOR THE APPLICANT, E. HOREMBALA FOR THE RESPONDENTS.

DECISION OF THE BOARD: SEPTEMBER 20, 1968.

. . . .

2. THIS IS AN APPLICATION MADE PURSUANT TO SECTION 47A OF THE LABOUR RELATIONS ACT.

3. THE EVIDENCE RELATING TO THE EVENTS WHICH LED TO THE MAKING OF THE APPLICATION IS AS FOLLOWS. ON OR ABOUT JULY 20TH, 1968, SHAW BAKING COMPANY LIMITED (HEREINAFTER REFERRED TO AS SHAW) PURCHASED FOR VALUABLE CONSIDERATION THE ASSETS OF MCGAVIN TOASTMASTER LIMITED (HEREINAFTER REFERRED TO AS MCGAVIN). ON OR ABOUT THE SAME DATE MCGAVIN CEASED ITS OPERATIONS. SOME OF THE PRODUCTION EMPLOYEES OF MCGAVIN WERE IMMEDIATELY HIRED BY SHAW AND THESE EMPLOYEES HAVE BEEN INTERMINGLED WITH THOSE PERSONS THEN ALREADY IN THE EMPLOY OF SHAW. SHAW ALSO HIRED ALL OF THE SALES FORCE OF MCGAVIN, ACQUIRED THE LATTER'S CUSTOMER LISTS AND ROUTES AND HAS CONTINUED TO USE THE TRADE NAME OF "TOASTMASTER" WHICH HAD FORMERLY BEEN USED BY MCGAVIN ON ITS BAKERY PRODUCTS.

4. BASED ON THE ABOVE EVIDENCE, THE BOARD FINDS THAT THERE HAS BEEN A SALE OF A BUSINESS BY MCGAVIN TO SHAW WITHIN THE MEANING OF SECTION 47A OF THE LABOUR RELATIONS ACT.

5. PRIOR TO THE ABOVE SALE, THE APPLICANT HELD THE BARGAINING RIGHTS FOR A UNIT OF EMPLOYEES OF BOTH MCGAVIN AND SHAW AND UNTIL THE SALE THE APPLICANT WAS A PARTY TO SEPARATE COLLECTIVE AGREEMENTS WITH THE TWO RESPONDENT COMPANIES. BY VIRTUE OF SUBSECTION (2) OF SECTION 47A, THE APPLICANT CONTINUES TO HOLD THE BARGAINING RIGHTS FOR THOSE FORMER EMPLOYEES OF MCGAVIN WHO BECAME EMPLOYEES OF SHAW AT THE TIME OF THE SALE. THE COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND MCGAVIN, HOWEVER, CEASED TO BE OPERATIVE.

6. SUBSECTION (5) OF SECTION 47A READS:

WHERE A BUSINESS WAS SOLD TO A PERSON WHO CARRIES ON ONE OR MORE OTHER BUSINESSES AND A TRADE UNION IS THE BARGAINING AGENT OF THE EMPLOYEES IN ANY OF THE BUSINESSES AND SUCH PERSON INTERMINGLES THE EMPLOYEES

OF ONE OF THE BUSINESSES WITH THOSE OF ANOTHER OF THE BUSINESSES, THE BOARD MAY, UPON THE APPLICATION OF ANY PERSON OR TRADE UNION CONCERNED,

- (A) DETERMINE WHETHER THE EMPLOYEES CONCERNED CONSTITUTE ONE OR MORE APPROPRIATE BARGAINING UNITS;
- (B) DECLARE WHICH TRADE UNION OR TRADE UNIONS, IF ANY, SHALL BE THE BARGAINING AGENT OR AGENTS FOR THE EMPLOYEES IN SUCH UNIT OR UNITS; AND
- (C) AMEND, TO SUCH EXTENT AS THE BOARD DEEMS NECESSARY, ANY CERTIFICATE ISSUED TO ANY TRADE UNION OR ANY BARGAINING UNIT DEFINED IN ANY COLLECTIVE AGREEMENT.

HERE THERE HAS BEEN AN INTERMINGLING OF THE EMPLOYEES OF SHAW AND THE FORMER EMPLOYEES OF MCGAVIN. ACCORDINGLY, PURSUANT TO THE AUTHORITY VESTED IN THE BOARD BY THE ABOVE SUBSECTION, THE BOARD FINDS THAT THE APPROPRIATE BARGAINING UNIT IS A SINGLE UNIT COMPOSED OF ALL OF THE EMPLOYEES OF SHAW SAVE AND EXCEPT FOREMEN AND ROUTE SUPERVISORS AND PERSONS ABOVE THE RANK OF FOREMAN AND ROUTE SUPERVISOR, OFFICE STAFF, PLANT PROTECTION PERSONNEL, MECHANICS, SALES GIRLS (LOBLAWS) AND EMPLOYEES REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK.

7. THE BOARD DECLARES THAT THE APPLICANT CONTINUES TO BE THE BARGAINING AGENT FOR THE EMPLOYEES IN THE ABOVE DESCRIBED BARGAINING UNIT.

8. WE WOULD MENTION THAT THE APPLICANT HAS REQUESTED THAT THE BOARD MAKE A DETERMINATION AS TO THE SENIORITY STATUS AND VACATION ENTITLEMENTS OF THE FORMER EMPLOYEES OF MCGAVIN WHO ARE NOW EMPLOYED BY SHAW. THESE ARE MATTERS THAT DO NOT FALL WITHIN THE PURVIEW OF THE BOARD'S JURISDICTION IN THE INSTANT APPLICATION.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

13757-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SENTRY DEPARTMENT STORES LIMITED (OPERATING UNDER THE NAME G.E.M. STORES (1965)) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

DECISION OF THE BOARD:

SEPTEMBER 26, 1968.

1. THE APPLICANT BY LETTER DATED SEPTEMBER 25TH, 1968, HAS REQUESTED THE BOARD TO APPOINT AN EXAMINER "TO DETERMINE THE VALIDITY OF THE EMPLOYER'S DIVISION OF ITS PAYROLL INTO FULL TIME AND PART TIME PERSONNEL ...". THE APPLICANT'S LETTER READS, IN PART, AS FOLLOWS:

WE NOTE PARTICULARLY THAT THE BOARD HAS ORDERED A VOTE IN UNIT No. 1 (THE FULL TIME UNIT) AND GRANTED A CERTIFICATE IN UNIT No. 2 (THE PART TIME UNIT). WE ALSO NOTE THAT THE BOARD HAS NOT SEEN FIT TO ORDER A CONTINUATION OF THE HEARING FOR UNIT No. 1 SO THAT THE CHARGES SET OUT IN OUR LETTER TO THE BOARD DATED OCTOBER 27, 1967 MAY BE EXAMINED.

THE BOARD WILL OBSERVE THAT THE APPLICATION HEREIN WAS EXPRESSED TO BE FOR ALL EMPLOYEES OF THE RESPONDENT WITH SPECIFIC EXCLUSIONS. THE FORM OF THE APPLICATION DID NOT ITSELF CONTEMPLATE A BREAKDOWN BETWEEN FULL TIME AND PART TIME EMPLOYEES. THE DIVISION OF THE EMPLOYEES MADE BY THE BOARD IS, OF COURSE, CONSISTENT WITH ESTABLISHED BOARD POLICY.

NO SUBMISSIONS WERE MADE AT THE HEARING WITH RESPECT TO THE DIVISION OF THE UNIT AND NO ANNOUNCEMENT WAS MADE BY THE BOARD WITH RESPECT TO THE EMPLOYER LISTS, THE DIVISION OF THE LIST BETWEEN THE TWO UNITS OR THE MEMBERSHIP POSITION OF THE APPLICANT.

2. THE BOARD'S DECISION OF SEPTEMBER 5TH, 1968 WAS MADE FOLLOWING A HEARING TO HEAR REPRESENTATIONS OF THE PARTIES CONCERNING THE MATTERS CONTAINED IN THE REPORT OF THE EXAMINER WHICH REPORT WAS MADE PURSUANT TO THE EXAMINER'S APPOINTMENT DATED NOVEMBER 16TH, 1967, WHEREIN THE EXAMINER WAS "AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT AND MORE PARTICULARLY ON THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER ...".

3. THE MATTERS RAISED BY THE APPLICANT IN ITS LETTER DATED SEPTEMBER 25TH, 1968 COULD HAVE BEEN DEALT WITH DURING THE COURSE OF THE EXAMINER'S INQUIRY WHICH WAS DIRECTED ON NOVEMBER 16TH, 1967. THE BOARD IS OF OPINION THAT THE APPLICANT HAD FULL OPPORTUNITY TO CALL EVIDENCE WITH RESPECT TO THE MATTERS THAT THE APPLICANT WISHES THE BOARD TO INQUIRE INTO THROUGH THE SERVICES OF AN EXAMINER DURING THE COURSE OF THE EXAMINER'S HEARINGS WHICH ALREADY HAVE BEEN CONDUCTED IN THIS CASE.

4. THE BOARD WISHES TO POINT OUT THAT THE APPLICANT IS IN ERROR WHEN THE APPLICANT STATES THAT "NO ANNOUNCEMENT WAS MADE BY THE BOARD WITH RESPECT TO THE EMPLOYER LISTS, THE DIVISION OF THE LIST BETWEEN THE TWO UNITS OR THE MEMBERSHIP POSITION OF THE APPLICANT." THE BOARD'S RECORDS CLEARLY INDICATE THAT THE PARTIES WERE ADVISED AT THE FIRST HEARING IN THIS MATTER OF THE COMPOSITION OF THE LIST FILED BY THE RESPONDENT WHICH LIST INCLUDED A BREAKDOWN OF THE FULL TIME AND PART TIME EMPLOYEES IN ALL THE DEPARTMENTS IN THE RESPONDENT'S STORE, WHICH EMPLOYEES THE BOARD HAS FOUND TO BE EMPLOYEES OF THE RESPONDENT IN ITS DECISION OF SEPTEMBER 5TH, 1968, IN THIS MATTER. IN ADDITION, THE PARTIES WERE ALSO ADVISED OF THE MEMBERSHIP POSITION ENJOYED BY THE APPLICANT WITH RESPECT TO THE EMPLOYEES WHOSE NAMES APPEARED ON THE FULL TIME AND PART TIME LIST. THE APPLICANT HAD FULL OPPORTUNITY TO MAKE WHATEVER REPRESENTATIONS IT WISHED TO MAKE AND TO MAKE ANY CHALLENGES DEEMED ADVISABLE WITH RESPECT TO THE RESPONDENT'S LIST OF EMPLOYEES. IN ADDITION, THE APPOINTMENT OF THE EXAMINER OF NOVEMBER 16TH, 1967 INCLUDED THE AUTHORIZATION TO INQUIRE INTO THE LIST OF EMPLOYEES FILED BY THE RESPONDENT IN THIS MATTER. IF THE APPLICANT NEGLECTED TO CALL EVIDENCE AVAILABLE TO IT WITH RESPECT TO THE EXAMINER'S INQUIRY INTO THE RESPONDENT'S LIST OF EMPLOYEES, THE BOARD IS OF OPINION THAT NO FURTHER OPPORTUNITY SHOULD NOW BE GIVEN TO THE APPLICANT TO COMPLETE ITS EVIDENCE IN THIS REGARD.

5. THE BOARD IS THEREFORE NOT PREPARED TO ACCEDE TO THE APPLICANT'S REQUEST AS CONTAINED IN ITS LETTER OF SEPTEMBER 25TH, 1968, AND THE APPLICANT'S REQUEST THAT THE BOARD RE-APPOINT AN EXAMINER IN THIS MATTER IS THEREFORE DENIED.

14898-68-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA (APPLICANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
O. HODGES AND J.E.C. ROBINSON.

DECISION OF THE BOARD: SEPTEMBER 18TH, 1968.

1. BY LETTERS DATED SEPTEMBER 12TH AND 13TH, THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED SEPTEMBER 11TH, 1968.

2. WHETHER OR NOT THE EMPLOYEE NAMED IN THE LETTER OF SEPTEMBER 13TH IS IN FACT AN EMPLOYEE IN THE BARGAINING UNIT AS OF THE DATE OF THE APPLICATION WILL NOT CHANGE THE BOARD'S DETERMINATION WITH RESPECT TO THE REQUIRED PERCENTAGE OF SUCH EMPLOYEES.

A CONSIDERATION OF THIS MATTER MAY BE MADE BY THE PARTIES AT THE TIME THE VOTERS' LISTS ARE SETTLED.

3. THE APPLICANT DID NOT AT THE HEARING CHALLENGE THE LIST OF EMPLOYEES FILED BY THE RESPONDENT BUT DID CHALLENGE THE INCLUSION ON THAT LIST OF J. SNELGROVE AND S. WOLF. AN EXAMINER HAS BEEN APPOINTED BY THE BOARD TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THESE TWO PERSONS.

4. ACCORDINGLY, THE APPLICANT'S REQUEST IS HEREBY DENIED.

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TERMINATION

14706-68-R: AIDEN WHELAN (APPLICANT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, AFL-CIO-CLC (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS F.W. MURRAY AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: J.P. McNAUGHTON FOR THE APPLICANT; MARTIN LEVINSON, NORMAN HARPER FOR THE RESPONDENT; AND NORMAN L. MATHEWS, Q.C., MISS IRENE SHAW APPEARING FOR STEVENSON MEMORIAL HOSPITAL.

DECISION OF THE BOARD: SEPTEMBER 26, 1968.

1. IN ACCORDANCE WITH THE DECISION OF THE BOARD DATED JULY 8TH, 1968, A REPRESENTATION VOTE WAS TAKEN OF THE EMPLOYEES IN THE BARGAINING UNIT ON JULY 31ST, 1968. AFTER RECEIVING NOTICE OF THE RESPONDENT'S CHARGES WITH RESPECT TO THE PETITION AND ITS REQUEST OF THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER, THE BALLOT BOX WAS SEALED. FOLLOWING ITS DECISION DATED JULY 24TH, 1968, THE BOARD HEARD THE EVIDENCE RELATING TO THE CHARGES MADE BY THE RESPONDENT AGAINST THE PETITION FILED IN SUPPORT OF THE APPLICATION.

2. THE EVIDENCE ESTABLISHED THAT MR. J. D. BOWERMAN IS ENGAGED IN THE PRACTICE OF LAW IN ALLISTON AND EMPLOYS IN HIS PRACTICE A JUNIOR SOLICITOR, MR. PARSLOE. MR. BOWERMAN HAS BEEN AN HONOURARY MEMBER OF THE BOARD OF TRUSTEES OF THE STEVENSON MEMORIAL HOSPITAL SINCE FEBRUARY 1967 AND FOR A NUMBER OF YEARS PRIOR TO THAT DATE, A REGULAR MEMBER OF THE BOARD. MR. BOWERMAN TESTIFIED THAT HE HAD NOT ATTENDED ANY MEETINGS OF THE BOARD SINCE BECOMING AN HONOURARY MEMBER AND HIS ATTENDANCE FROM 1964-66 WAS SPORADIC. HE HAD NEVER BEEN CONSULTED ON LABOUR-MANAGEMENT RELATIONS AT THE HOSPITAL. ALTHOUGH OCCASIONALLY GIVING LEGAL ADVICE TO MANAGEMENT HE HAD NEVER RENDERED AN ACCOUNT FOR HIS SERVICES. HE RECEIVED

A TELEPHONE CALL FROM MR. WHELAN WHOM HE HAD KNOWN ALL HIS LIFE, AND HAD THEN TOLD HIM THAT HE DID NOT KNOW ANYTHING ABOUT LABOUR LAW AND SUGGESTED THAT HE CONSULT MR. PARSLOE OF HIS OFFICE WHO MIGHT KNOW SOMETHING ABOUT IT OR HE COULD REFER HIM TO A TORONTO COUNSEL. MR. BOWERMAN SAID THAT HE DID NOT KNOW WHAT WHELAN'S PROBLEM WAS; HAD NEVER DISCUSSED THIS APPLICATION WITH ANYONE CONNECTED WITH THE MANAGEMENT OF THE HOSPITAL AND WAS NOT AWARE THAT MR. PARSLOE WAS ACTING FOR WHELAN WITH RESPECT TO THE PETITION. HE HAD NOT DISCUSSED THE MATTER WITH PARSLOE.

3. MR. AIDEN WHELAN, THE APPLICANT, TESTIFIED THAT THERE WERE TWO MEETINGS OF EMPLOYEES PRIOR TO HIS TELEPHONE CALL TO BOWERMAN AND THEY HAD THEN DECIDED THAT THEY DID NOT WANT THE UNION. HE SAID HE DID NOT KNOW THAT BOWERMAN WAS CONNECTED IN ANY WAY WITH THE HOSPITAL AND IN HIS TELEPHONE CONVERSATION WITH BOWERMAN HE HAD ASKED IF HE KNEW ANYTHING ABOUT LABOUR LAW, TO WHICH BOWERMAN REPLIED NO, AND THAT HE DID NOT WANT TO LEARN BUT SUGGESTED THAT WHELAN COULD TALK TO PARSLOE IN HIS OFFICE. WHELAN MET WITH PARSLOE THE NEXT DAY AT WHICH TIME HE ASKED PARSLOE TO PREPARE THE APPLICATION. PARSLOE PREPARED THE HEADING ON THE PETITION AND WHELAN OBTAINED ALL THE SIGNATURES ON IT. PRIOR TO THE TELEPHONE CALL TO BOWERMAN AND TO THE MEETING WITH PARSLOE, WHELAN HAD OBTAINED SIGNATURES OF EMPLOYEES ON REVOCATIONS OF CHECK-OFF WHICH WERE SUBMITTED TO THE SOLICITOR WHO IN TURN FORWARDED THEM TO THE BOARD WITH THE APPLICATION. SUBSEQUENTLY, THE PETITION WAS PREPARED BY PARSLOE CIRCULATED BY WHELAN, AND SUBMITTED TO THE BOARD BY PARSLOE ON BEHALF OF THE APPLICANT.

4. IN ACCORDANCE WITH SECTION 43(3) OF THE LABOUR RELATIONS ACT, THE BOARD MUST DETERMINE WHETHER NOT LESS THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT HAVE VOLUNTARILY SIGNIFIED IN WRITING THAT THEY NO LONGER WISH TO BE REPRESENTED BY THE TRADE UNION. THE BOARD'S DISCRETION LIES IN DETERMINING WHETHER THE TRUE WISHES OF THE EMPLOYEES HAVE BEEN DISCLOSED IN THE APPLICATION. BY ITS DECISION DATED JULY 8TH, 1968, THE BOARD HAVING CONSIDERED ALL OF THE EVIDENCE AT THE FIRST HEARING IN THIS MATTER RELATING TO THE PETITION WAS SATISFIED THAT THE REQUIRED NUMBER OF EMPLOYEES HAD VOLUNTARILY SIGNIFIED THEIR INTENTIONS. IT IS NOT NECESSARY TO SET OUT IN DETAIL THE EVIDENCE ON WHICH THAT FINDING WAS MADE AS IT APPEARS THAT THE ONLY COMPLICATING ADDITION TO THE EVIDENCE THEN CONSIDERED BY THE BOARD IS THE CONNECTION OF MR. BOWERMAN WITH THE STEVENSON MEMORIAL HOSPITAL. MR. BOWERMAN DID NOT DISCLOSE HIS RELATIONSHIP WITH THE HOSPITAL TO WHELAN AND INDEED THERE IS NO EVIDENCE TO SHOW THAT MR. PARSLOE WAS AWARE OF IT. IT IS ABUNDANTLY CLEAR FROM THE EVIDENCE THAT THE APPLICATION ORIGINATED WITH THE EMPLOYEES OF THE HOSPITAL. AT THE TIME WHELAN CONTACTED BOWERMAN, THE EMPLOYEES' INTENTION HAD ALREADY BEEN EXPRESSED AND HE WAS SEEKING TO HAVE IT PROPERLY PROCESSED.

MR. BOWERMAN SERVED ON THE BOARD OF TRUSTEES OF THE HOSPITAL FOR A NUMBER OF YEARS WITH INTERMITTANT ATTENDANCE AT MEETINGS AND WE HAVE NO HESITATION IN ACCEPTING HIS TESTIMONY THAT HE DID NOT HAVE ANY DISCUSSIONS RELATING TO LABOUR MATTERS AND HE DID NOT KNOW OF THIS APPLICATION NOR THE REASONS FOR MR. WHELAN'S TELEPHONE CALL TO HIM. IN ANY EVENT HE DID NOT ASSIST WHELAN IN ANY WAY EXCEPT TO SUGGEST HE CONTACT MR. PARSLÖE. FURTHER, WE ACCEPT MR. BOWERMAN'S STATEMENT THAT HE HAD NOTHING FURTHER TO DO WITH WHELAN AND DID NOT KNOW THAT PARSLÖE HAD ACTED FOR HIM. WHILE PARSLÖE IS EMPLOYED BY BOWERMAN AS A SOLICITOR IN HIS OFFICE, IT DOES NOT FOLLOW THAT HE IS NECESSARILY AWARE OF ALL THE ITEMS OF BUSINESS THAT FLOW THROUGH A BUSY PRACTITIONER'S OFFICE.

5. WE FIND ON THE EVIDENCE THAT MR. BOWERMAN ACTED IN GOOD FAITH AND WHILE PERHAPS BEING UNWISE WITHIN THE CONCEPT OF PROPER LABOUR RELATIONS PROCEDURE, WE ATTACH NO SINISTER MOTIVES IN HIS SUGGESTION TO WHELAN TO CONTACT THE OTHER SOLICITOR IN HIS OFFICE. HAVING FOUND THAT BOWERMAN DID NOT KNOW THAT PARSLÖE WAS ACTING FOR WHELAN IN THIS MATTER AND THERE IS NO SUGGESTION FROM THE EVIDENCE THAT PARSLÖE HAD ANY CONNECTION WITH THE MANAGEMENT OF THE HOSPITAL MR. PARSLÖE'S ATTENTION WAS OBVIOUSLY DIRECTED SOLELY TO THE APPLICANT FOR WHOM HE ACTED. IT CANNOT BE SAID IN THE CIRCUMSTANCES OF THIS CASE THAT MANAGEMENT PREPARED AND PRESENTED A PETITION TO THE APPLICANT AS WAS FOUND BY THE BOARD TO BE THE SITUATION IN THE PEEL BLOCK CASE, 1960-64 TRANSFER BINDER, C.C.H. ¶16,277. IN THAT CASE THE BOARD STATED:

IT IS MANIFEST THAT FROM THE TIME OF ITS PREPARATION AND CIRCULATION TO THE TIME THE PETITION WAS MAILED TO THE BOARD, THE ROLE OF MANAGEMENT IN THE MATTER WAS NEITHER SLIGHT, AS SUGGESTED BY COUNSEL FOR THE GROUP OF EMPLOYEES, NOR NEGLIGIBLE.

THE FACTS IN THE INSTANT CASE CAN BE CLEARLY DISTINGUISHED FROM THAT CASE IN THAT THERE IS NO EVIDENCE OF MANAGEMENT PARTICIPATION IN THE PETITION WHATSOEVER. BOWERMAN FROM TIME TO TIME RENDERED LEGAL ADVICE OVER THE TELEPHONE TO THE HOSPITAL AND AS WELL GAVE ADVICE IN HIS CAPACITY AS A TRUSTEE. HE WAS NOT PAID FOR HIS SERVICES NOR DID HE RENDER AN ACCOUNT. IN OUR VIEW HIS RELATIONSHIP WITH THE HOSPITAL WAS SOLELY AS A TRUSTEE AND NOT AS A SOLICITOR ACTING ON ITS BEHALF IN THE LATTER CAPACITY. THIS CASE CAN THEN ALSO BE DISTINGUISHED FROM THE FACTS IN THE PARKE DAVIS & Co. LTD. CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER 1966, PAGE 583 WHERE AFTER A CONVERSATION WITH THE ASSISTANT MANAGER OF THE PLANT, THE COMPANY'S SOLICITOR ASSISTED THE PETITIONER.

IN THE PEEL BLOCK CASE [SUPRA] THE BOARD STATED:

WHAT IS ALWAYS TO BE DETERMINED IN THIS RESPECT IS THE TRUE WISHES OF THE EMPLOYEES, NOT THOSE OF THE EMPLOYER WHO MAY BE SEEKING TO IMPROPERLY INFLUENCE THEM.

IN OUR OPINION ON THE EVIDENCE BEFORE THE BOARD IN THIS CASE, WE FIND THAT THE RESPONDENT DID NOT ESTABLISH THAT EITHER BOWERMAN OR THE MANAGEMENT OF THE HOSPITAL EXERTED ANY INFLUENCE ON THE EMPLOYEES IN VOLUNTARILY EXPRESSING THEIR DESIRES BY SIGNING THE PETITION.

6. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE ALLEGATIONS OF THE RESPONDENT WE ARE NOT PERSUADED THAT THE PREVIOUS DECISION OF THE BOARD SHOULD BE VARIED OR REVOKED. ACCORDINGLY, WE THEREFORE CONFIRM THE DECISION DATED JULY 8TH, 1968.

7. THE REGISTRAR IS DIRECTED TO COUNT THE BALLOTS IN THIS MATTER AND TO THEREAFTER REPORT TO THE BOARD.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

SECTION 65

13998-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT).

- AND -

13939-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: L. INGLE, O. URBANOVICS AND F. CARELLI FOR THE COMPLAINANT, F. R. VON VEI AND F. OBER FOR THE RESPONDENT.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER J. E. C. ROBINSON: SEPTEMBER 13, 1968.

1. SUBSEQUENT TO A HEARING OF THE COMPLAINT OF THE COMPLAINANT IN THIS MATTER, THE BOARD BY A DECISION DATED JANUARY 31ST, 1968 DIRECTED THE RESPONDENT TO REINSTATE THE AGGRIEVED PERSON FRANCISCO CARELLI IN HIS EMPLOYMENT AND TO PAY TO HIM COMPENSATION FOR LOSS OF WAGES FROM THE DATE OF HIS DISCHARGE ON

DECEMBER 18TH, 1967 TO AND INCLUDING JANUARY 24TH, 1968, THE DATE OF THE BOARD HEARING OF THE COMPLAINT. THE BOARD FURTHER DIRECTED THAT THE RESPONDENT AND THE COMPLAINANT MEET WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS SUSTAINED BY CARELLI BETWEEN JANUARY 24TH, 1968 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT.

2. THE EVIDENCE IS THAT FOLLOWING THE RELEASE OF THE BOARD'S DECISION DATED JANUARY 31ST, 1968, CARELLI TOGETHER WITH A REPRESENTATIVE OF THE COMPLAINANT UNION LEOPOLD BERTACCI MET WITH FRANK OBER THE PRESIDENT OF THE RESPONDENT CONCERNING THE DECISION OF THE BOARD. CARELLI TESTIFIED THAT BERTACCI ACTED AS SPOKESMAN ON HIS BEHALF. NICOLA PHILIPOFF WHO IS THE RESPONDENT'S ACCOUNTANT TESTIFIED THAT HE WAS IN ATTENDANCE AT THAT MEETING AND THAT IT WAS AGREED THAT THE RESPONDENT WOULD PAY TO CARELLI THE \$540.00 COMPENSATION FOR LOST WAGES DIRECTED BY THE BOARD AND THAT CARELLI WAS OFFERED RE-EMPLOYMENT COMMENCING ON MONDAY, FEBRUARY 5TH, 1968. ACCORDING TO CARELLI, HE WAS NOT OFFERED RE-EMPLOYMENT AT THAT TIME. HIS EVIDENCE IS, HOWEVER, THAT HE HAD ALREADY SECURED EMPLOYMENT ELSEWHERE AND COMMENCED WORK WITH HIS NEW EMPLOYER ON FEBRUARY 6TH. PHILIPOFF'S TESTIMONY IS THAT NO DISCUSSION OF ADDITIONAL COMPENSATION OCCURRED IN HIS PRESENCE. HE FURTHER TESTIFIED THAT CARELLI DID NOT REPORT FOR WORK ON FEBRUARY 5TH.

3. CARELLI'S EVIDENCE IS BY NO MEANS CLEAR. IT APPEARS, HOWEVER, FROM HIS TESTIMONY THAT OBER TELEPHONED HIM SOME TIME EARLY IN THE WEEK COMMENCING ON MONDAY, FEBRUARY 5TH ABOUT RETURNING TO WORK ON WHICH OCCASION CARELLI TOLD HIM HE HAD OTHER EMPLOYMENT. OBER THEREUPON REQUESTED THAT CARELLI COME TO THE RESPONDENT'S OFFICE TO GET HIS CHEQUE. CARELLI TESTIFIED THAT HE DID NOT COMMUNICATE WITH BERTACCI OR ANY OTHER REPRESENTATIVE OF THE COMPLAINANT UNION WHEN HE ATTENDED AT OBER'S OFFICE ON FEBRUARY 8TH. ON THAT OCCASION HE WAS GIVEN A CHEQUE IN THE AMOUNT OF \$540.00 AND SIGNED A STATEMENT WHICH READS AS FOLLOWS:

I FRANCESCO CARELLI HEREBY STATE AS FOLLOWS:-

I HAVE BEEN PAID THE SUM OF \$540.00 BY NORAK STEEL CONSTRUCTION LIMITED; SUCH AMOUNT BEING IN FULL SATISFACTION OF ALL MY CLAIMS THAT I MIGHT HAVE OUT OF MY EMPLOYMENT WITH NORAK STEEL CONSTRUCTION LIMITED, AND IN FULL SATISFACTION OF A DECISION OF THE ONTARIO LABOUR RELATIONS BOARD HANDED DOWN ON JANUARY 31, 1968 PERTAINING TO A COMPLAINT UNDER SECTION 65 OF THE ONTARIO LABOUR RELATIONS ACT.

I HAVE FOUND SUITABLE EMPLOYMENT AT
DOMINION BRIDGE AND HAVE NO DESIRE TO
RETURN TO WORK AT NORAK STEEL CONSTRUCTION
LIMITED.

4. JOHN KUBIAK WHO IS THE SALES MANAGER OF THE RESPONDENT TESTIFIED THAT HE WAS IN OBER'S OFFICE AT THE TIME CARELLI RECEIVED THE CHEQUE AND SIGNED THE ABOVE STATEMENT. KUBIAK'S EVIDENCE IS THAT OBER EXPLAINED THE STATEMENT TO CARELLI IN ENGLISH AND INQUIRED OF CARELLI IF HE UNDERSTOOD ITS CONTENTS TO WHICH CARELLI REPLIED IN THE AFFIRMATIVE.

5. COUNSEL FOR THE COMPLAINANT SUBMITS THAT THE BOARD SHOULD NOT ACCEPT THE STATEMENT SIGNED BY CARELLI AS FINAL SETTLEMENT OF THE INSTANT COMPLAINT. COUNSEL ARGUES THAT THE PARTIES TO THE PROCEEDING ARE THE COMPLAINANT UNION AND THE RESPONDENT COMPANY AND THAT ACCORDINGLY ONLY THE COMPLAINANT HAS THE AUTHORITY TO MAKE A BINDING SETTLEMENT OF THE COMPLAINT. COUNSEL FOR THE RESPONDENT ARGUES THAT THE COMPLAINANT IS ONLY THE AGENT FOR CARELLI AND THAT ACCORDINGLY CARELLI WAS QUITE ENTITLED TO MAKE ANY SETTLEMENT AND SIGN ANY RELEASE WHICH WAS MUTUALLY AGREEABLE TO HIM AND THE RESPONDENT.

6. A COMPLAINT UNDER SECTION 65 OF THE ACT CAN BE MADE BY AN AGGRIEVED PERSON ON HIS OWN BEHALF OR BY A TRADE UNION ON BEHALF OF AN AGGRIEVED PERSON. IN THE LATTER CASE, THE TRADE UNION IS ACTING AS THE AGENT FOR THE AGGRIEVED PERSON. IT FOLLOWS THAT THE AGGRIEVED PERSON AS THE PRINCIPAL CAN MAKE A SETTLEMENT OF A COMPLAINT WITH HIS EMPLOYER WITHOUT THE AEGIS OF A TRADE UNION, EVEN IF THE LATTER IS THE NAMED COMPLAINANT. WE WOULD ADD THAT SUCH A SETTLEMENT IS NOT IN CONFLICT WITH THE BOARD'S DIRECTION CONTAINED IN ITEM (3) OF PARAGRAPH 12 OF ITS DECISION OF JANUARY 31ST, 1968.

7. WE WOULD MENTION THAT SHOULD AN EMPLOYER MISREPRESENT THE NATURE OF A SETTLEMENT OR EXERCISE UNDUE INFLUENCE UPON AN AGGRIEVED PERSON, THE BOARD WOULD ENTERTAIN ALLIGATIONS TO THAT EFFECT AND WOULD SET ASIDE ANY SETTLEMENT SHOULD THE PARTY MAKING SUCH ALLEGATIONS BE ABLE TO SUBSTANTIATE THEM IN EVIDENCE.

8. DEALING WITH THE EVIDENCE IN THE INSTANT CASE, ON THE FIRST OCCASION WHEN CARELLI ATTENDED AT THE OFFICE OF OBER HE WAS ACCOMPANIED BY A REPRESENTATIVE OF THE COMPLAINANT UNION. ON THE SECOND OCCASION WHEN HE ATTENDED AT THE RESPONDENT'S OFFICES AND SIGNED THE DOCUMENT QUOTED IN PARAGRAPH 3, IT WAS HIS CHOICE NOT TO BE REPRESENTED BY THE COMPLAINANT UNION. WHILE CARELLI GAVE HIS EVIDENCE BEFORE THE BOARD IN ITALIAN, WE ARE SATISFIED THAT HE HAS SUFFICIENT UNDERSTANDING OF THE ENGLISH LANGUAGE TO FULLY APPRECIATE THE NATURE OF THE SETTLEMENT HE MADE WITH THE RESPONDENT.

FURTHER, WE ARE SATISFIED THAT CARELLI SIGNED THE DOCUMENT OF SETTLEMENT OF HIS OWN FREE WILL. ACCORDINGLY, THE BOARD FINDS THAT CARELLI IS NOT ENTITLED TO ANY FURTHER COMPENSATION FROM THE RESPONDENT.

DECISION OF BOARD MEMBER P. J. O'KEEFE:

SEPTEMBER 13, 1968.

FOLLOWING A HEARING INTO A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT, THE BOARD, ON JANUARY 31ST, MADE THE FOLLOWING DETERMINATION:

12. (1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY FRANCISCO CARELLI TO THE SAME OR LIKE EMPLOYMENT, THE SAME WAGES AND EMPLOYMENT BENEFITS AS HE HAD, AND RECEIVED, PRIOR TO AND UP TO THE TIME OF HIS DISCHARGE ON DECEMBER 18TH, 1967.
- (2) AS COMPENSATION FOR HIS LOSS OF WAGES AND EMPLOYMENT BENEFITS FROM DECEMBER 18TH, 1967 TO AND INCLUDING JANUARY 24TH, 1968, THE RESPONDENT SHALL FORTHWITH PAY TO FRANCISCO CARELLI THE SUM OF \$540.00.
- (3) THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY FRANCISCO CARELLI BETWEEN THE DATE OF THE HEARING ON JANUARY 24TH, 1968 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

FOLLOWING RELEASE OF THE ABOVE DECISION THE PARTIES MET IN ACCORDANCE WITH THE FOREGOING DETERMINATION. THERE IS SOME CONFLICT BETWEEN THE PARTIES AS TO WHAT WAS DISCUSSED AT THIS MEETING. HOWEVER THERE IS NO CONFLICT WITH REGARD TO THE FACT THAT ITEM 3 ABOVE WAS NOT DISCUSSED AND THAT THERE WAS NOT AT THAT TIME AN AGREEMENT BETWEEN THE PARTIES AS CONTEMPLATED IN THE ABOVE DETERMINATION.

ON OR ABOUT FEBRUARY 5TH, FRANK OBER, THE PRESIDENT OF THE RESPONDENT COMPANY, TELEPHONED CARELLI ABOUT RETURNING TO WORK AND ON LEARNING THAT CARELLI HAD FOUND EMPLOYMENT ELSEWHERE HE THEN REQUESTED HIM TO COME TO THE RESPONDENT'S OFFICE TO GET HIS CHEQUE.

THE EVIDENCE OF CARELLI IS THAT HE WAS OUT OF WORK SINCE THE PREVIOUS DECEMBER 18TH, THAT HE WAS SHORT OF MONEY AND THAT HE WAS TWO MONTHS IN ARREARS IN HIS RENT. HE PROCEEDED IMMEDIATELY TO THE RESPONDENT'S OFFICE TO PICK UP HIS CHEQUE AND ON THAT OCCASION SIGNED THE DOCUMENT QUOTED IN PARAGRAPH 3 OF THE MAJORITY DECISION. BASED ON ALL THE EVIDENCE, I AM SATISFIED THAT CARELLI DID NOT UNDERSTAND THE CONTENTS OF THE DOCUMENT THAT HE SIGNED. I AM SUPPORTED IN ARRIVING AT THIS CONCLUSION BY A STATEMENT CONTAINED IN PARAGRAPH 4 OF THE BOARD'S DECISION OF JANUARY 31ST, 1968 WHICH READS:

"CESCOLINI, WHO IS A FITTER IN THE EMPLOY OF THE RESPONDENT, TESTIFIED THAT HE ACTED AS AN INTERPRETER FOR FRANK OBER, THE PRESIDENT OF THE RESPONDENT COMPANY, WHEN HE TOLD CARELLI TO KEEP HIS SAFETY HELMET ON AND TO KEEP WORKING."

IN VIEW OF THE FACT THAT OBER GOT AN INTERPRETER TO GET HIS INSTRUCTIONS ACROSS TO CARELLI WITH REGARD TO THE SIMPLE MATTER OF KEEPING HIS SAFETY HELMET ON AND TO KEEP WORKING, IT IS EXTREMELY DIFFICULT TO ACCEPT THE PROPOSITION THAT THIS INVOLVED DOCUMENT IN QUESTION DRAWN UP IN LEGAL LANGUAGE AND EXPLAINED TO THE AGGRIEVED IN ENGLISH WAS EITHER UNDERSTOOD BY THE AGGRIEVED OR THAT THE RESPONDENT TOOK THE NECESSARY PRECAUTIONS TO SEE TO IT THAT FAIR PLAY WAS PROVIDED FOR IN THIS MEETING WITH THE AGGRIEVED. IN MY OPINION, THE BOARD SHOULD NOT ACCEPT THE DOCUMENT SIGNED BY CARELLI UNDER THE ABOVE PECULIAR CIRCUMSTANCES AS A SETTLEMENT OF THIS MATTER AS ENVISAGED BY THE BOARD'S DETERMINATION OF JANUARY 31ST.

EVEN IF THIS STATEMENT BY CARELLI WAS ABOVE SUSPICION AS TO ITS BONA FIDES, THE AGGRIEVED CARELLI DID NOT HAVE AUTHORITY TO MAKE SUCH A SETTLEMENT BECAUSE THE UNION WAS THE COMPLAINANT IN THE INSTANT CASE, AND ONLY THE COMPLAINANT UNION CAN MAKE A FINAL SETTLEMENT OF THIS COMPLAINT. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE COMPLAINANT UNION IS ONLY THE AGENT FOR CARELLI AND THAT ACCORDINGLY CARELLI WAS ENTITLED TO MAKE ANY SETTLEMENT AND SIGN ANY RELEASE WHICH WAS MUTUALLY AGREEABLE TO HIM AND THE RESPONDENT. IN OTHER WORDS THE RESPONDENT COULD IGNORE AND BYPASS THE COMPLAINANT UNION AND CUT OUT THE AGGRIEVED FROM THE BARGAINING UNIT AND MAKE ITS OWN SETTLEMENT WITH THE AGGRIEVED IRRESPECTIVE OF THE COMPLAINANT'S INTEREST IN THIS MATTER.

THE MAJORITY IN THIS DECISION HAVE ACCEPTED THE ARGUMENT PUT FORWARD BY THE RESPONDENT. IT DEALS WITH THE MATTER OF PRINCIPAL AND AGENT AS IF THIS WERE A REAL ESTATE TRANSACTION BETWEEN TWO INDIVIDUALS. THIS CASE, HOWEVER, IS NOT A REAL ESTATE TRANSACTION BETWEEN TWO INDIVIDUALS BUT IS A FAR MORE COMPLEX MATTER DEALING WITH INDUSTRIAL RELATIONS. I TAKE ISSUE WITH THE MAJORITY WHEN THEY DECLARE THAT THE COMPLAINANT UNION IS ACTING AS THE AGENT FOR THE AGGRIEVED PERSON. THE COMPLAINANT UNION AS THE CERTIFIED BARGAINING AGENT FOR A UNIT OF EMPLOYEES IS NOT SIMPLY THE AGENT OF ONE PERSON BUT IS THE COLLECTIVE BARGAINING AGENT FOR A NUMBER OF EMPLOYEES INCLUDING THE AGGRIEVED. IT HAS A RESPONSIBILITY IN INDUSTRIAL RELATIONS TO DEAL WITH THE RESPONDENT COMPANY, HAVING IN MIND AT ALL TIMES NOT ONLY THE INDIVIDUAL INTEREST OF ONE OF ITS MEMBERS, BUT ALSO ITS GREAT RESPONSIBILITY TO ALL THE MEMBERS IT REPRESENTS. IT HAS TO ACT IN A WAY THAT WILL SAFEGUARD THE INTEREST OF ITS COLLECTIVE RESPONSIBILITY. IT WOULD BE TO THE DETRIMENT OF ITS COLLECTIVE RESPONSIBILITY TO STAND IDLY BY AND ALLOW ONE OF ITS MEMBERS TO BE CUT OUT FROM THE GROUP BY THE EMPLOYER, OR ALLOW ONE OF ITS MEMBERS TO ACT ON HIS OWN WITH THE EMPLOYER TO THE POSSIBLE DETRIMENT OF THE OTHER MEMBERS OF THE BARGAINING UNIT.

IN THIS COMPLAINT, THE UNION IS THE COMPLAINANT. IT IS THE UNION THAT HAS BROUGHT THIS COMPLAINT BEFORE THE BOARD. IT IS THE UNION, AS THE COMPLAINANT, THAT HAS INCURRED FINANCIAL RESPONSIBILITY FOR LEGAL FEES, ETC. IN THIS MATTER. TO TREAT THE COMPLAINANT, WHICH IS THE LEGALLY CERTIFIED BARGAINING AGENT OF THE EMPLOYEES, AS OF NO CONSEQUENCE IN THIS COMPLAINT AFTER THEY HAVE SPENT THEIR MONEY, TIME AND EFFORT IN BRINGING THIS MATTER BEFORE THE BOARD IS TO DENY THE WHOLE PURPOSE OF CERTIFYING UNIONS AS COLLECTIVE BARGAINING AGENTS. IT IS, IN FACT, TO BYPASS THE KEY PURPOSE OF THE LABOUR RELATIONS ACT, WHICH IS TO PROVIDE FOR AN ORDERLY RELATIONSHIP BETWEEN MANAGEMENT AND UNIONS.

WHEN A TRADE UNION COMES BEFORE THIS BOARD AS THE COMPLAINANT IN ANY PROCEEDING UNDER THE ACT, PARTICULARLY AFTER IT HAS BEEN CERTIFIED BY THIS BOARD AS THE BARGAINING AGENT OF EMPLOYEES WHICH IT REPRESENTS AT THE PROCEEDING, IT MUST BE TREATED AS AN ENTITY QUITE DISTINCT FROM ITS MEMBERS AS INDIVIDUALS.

THE DECISION OF THE MAJORITY, IN WHICH THEY HAVE BY-PASSED THE WISHES AND REPRESENTATIONS OF THE COMPLAINANT, HAS THE EFFECT OF NULLIFYING ITS OWN CLEAR DETERMINATION IN ITEM 3 ABOVE. THERE COULD BE NOTHING CLEARER IN THIS DETERMINATION THAN THAT THE PARTIES, THE RESPONDENT COMPANY AND THE COMPLAINANT UNION, SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED BY FRANCISCO CARELLI ETC. THIS DIRECTION HAS NOT BEEN FOLLOWED BY THE RESPONDENT.

INDUSTRIAL RELATIONS COMMON SENSE AND A COMMON SENSE UNDERSTANDING OF THE PURPOSE OF THE ACT AND ITS INTERPRETATION LEADS ME TO ONLY ONE CONCLUSION IN THIS MATTER AND THAT SIMPLY IS THAT THE COMPLAINANT UNION IS THE PRINCIPAL IN THIS PROCEEDING AND ONLY THE COMPLAINANT UNION HAS THE AUTHORITY TO MAKE A BINDING SETTLEMENT OF THIS COMPLAINT. THIS AUTHORITY FLOWS FROM AT LEAST THREE SOURCES AS FOLLOWS:

- A. IT IS THE COMPLAINANT THAT IS THE PRINCIPAL IN THIS PROCEEDING.
- B. THE COMPLAINANT IS THE CERTIFIED BARGAINING AGENT NOT ONLY OF THE AGGRIEVED PERSON BUT ALSO OF THE OTHER EMPLOYEES WHO MAY BE AFFECTED BY THIS COMPLAINT.
- C. THE BOARD'S DETERMINATION IN ITEM (3) OF PARAGRAPH 12 OF THE DECISION OF JANUARY 31ST, 1968, DIRECTING THE COMPLAINANT UNION TO ACT IN THIS MATTER.

14890-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. SONCO TUBE LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: J. H. OSLER, Q.C., AND FORTUNATO RAO FOR THE APPLICANT; AND H.R. NATHAN FOR THE RESPONDENT.

DECISION OF RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES:
SEPTEMBER 30, 1968.

1. BY LETTER DATED SEPTEMBER 23RD, 1968, THE RESPONDENT REQUESTED THE BOARD TO REVIEW ITS DECISION DATED SEPTEMBER 12TH, 1968.

2. THE BOARD'S ASSUMPTION THAT THE GREEN NOTICE WAS POSTED OBVIOUSLY RESTS UPON THE MAXIM 'OMNIA RITE ESSE ACTA PRAESUMUNTUR'. NO EVIDENCE TO THE CONTRARY WAS ADDUCED WHEN THE MATTER WAS RAISED BY THE BOARD AT THE HEARING. IN ANY EVENT THE BOARD'S DECISION DOES NOT HINGE UPON THAT ASPECT OF THE CASE, AS MUST BE APPARENT FROM A READING OF PARAGRAPH 7 OF THE AWARD COMMENCING WITH THE WORDS "BE THAT AS IT MAY", AND THE CONTENTS OF PARAGRAPH 8 OF THE AWARD.

3. THERE IS NOTHING RAISED IN THE RESPONDENT'S LETTER WHICH WAS NOT AVAILABLE TO IT AT THE TIME OF THE HEARING. THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED.

DECISION OF BOARD MEMBER H. F. IRWIN:

SEPTEMBER 30, 1968.

WITHOUT IN ANY WAY DEROGATING FROM MY DISSENTING DECISION IN THIS CASE, I CONCUR THAT THE MATTER RAISED IN THE RESPONDENT'S REQUEST FOR REVIEW OF THE BOARD'S DECISION DATED SEPTEMBER 12TH, 1968, HAD BEEN FULLY CONSIDERED BY THE BOARD PRIOR TO THE DECISION BEING ISSUED. IN THE CIRCUMSTANCES, THE REQUEST FOR REVIEW MUST BE DISMISSED.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

15080-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL UNION 93 (APPLICANT) V. W.N. CONSTRUCTION (OTTAWA) LTD.
(RESPONDENT).

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 19TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT. IN ARRIVING AT THIS FINDING THE BOARD DID NOT CONSIDER THE CERTIFICATE OF MEMBERSHIP BECAUSE PAYMENT OF DUES INDICATED THEREON WAS MADE FOR A MONTH OUTSIDE THE SIX MONTH PERIOD PRIOR TO THE TERMINAL DATE OF THE APPLICATION. SEE BEN BRUINSMA AND SONS LIMITED CASE, O.L.R.B. MONTHLY REPORT, JULY 1963, P. 223.

(SEPTEMBER 20, 1968).

STATISTICAL TABLES FOR SEPTEMBER 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		SEPTEMBER 1968	1ST 6 MONTHS OF FISCAL Y 1968-69	1967-6
I.	CERTIFICATION	84	521	512
II.	DECLARATION TERMINATING BARGAINING RIGHTS	8	28	44
III.	DECLARATION OF SUCCESSOR STATUS	-	9	6
IV.	DECLARATION THAT STRIKE UNLAWFUL	7	25	27
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	3	12
VI.	CONSENT TO PROSECUTE	10	55	66
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	14	94	79
VIII.	MISCELLANEOUS	<u>7</u>	<u>36</u>	<u>26</u>
TOTAL		<u>130</u>	<u>771</u>	<u>772</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		SEPTEMBER 1968	1ST 6 MONTHS OF FISCAL Y 1968-69	1967-6
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		69	532	483

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		SEPTEMBER	1ST 6 MTHS OF FISCAL YR.	
		1968	1968-69	1967-68
I.	CERTIFICATION	85	531	510
II.	DECLARATION TERMINATING BARGAINING RIGHTS	5	25	35
III.	DECLARATION OF SUCCESSOR STATUS	2	13	7
IV.	DECLARATION THAT STRIKE UNLAWFUL	4	21	28
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	3	11
VI.	CONSENT TO PROSECUTE	6	51	54
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	25	106	89
VIII.	MISCELLANEOUS	<u>2</u>	<u>30</u>	<u>41</u>
TOTAL		<u>129</u>	<u>780</u>	<u>775</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION

	NUMBER OF APPLICATIONS			NUMBER OF EMPLOYEES*		
	SEPTEMBER 1ST 6 MTHS FISCAL YR. 1968	1968-69	1967-68	SEPTEMBER 1ST 6 MTHS FISC 1968	1968-69	1967
<u>I. CERTIFICATION</u>						
GRANTED	59	360	357	1484	11710	10106
DISMISSED	23	126	110	1191	3885	7780
WITHDRAWN	<u>3</u>	<u>45</u>	<u>43</u>	<u>32</u>	<u>753</u>	<u>994</u>
TOTAL	<u>85</u>	<u>531</u>	<u>510</u>	<u>2707</u>	<u>16348</u>	<u>18880</u>
 <u>II. TERMINATION OF BARGAINING RIGHTS</u>						
GRANTED	3	13	18	28	311	255
DISMISSED	2	9	16	74	126	684
WITHDRAWN	<u>-</u>	<u>3</u>	<u>1</u>	<u>-</u>	<u>58</u>	<u>1</u>
TOTAL	<u>5</u>	<u>25</u>	<u>35</u>	<u>102</u>	<u>495</u>	<u>940</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		NUMBER OF APPLICATIONS		
	SEPTEMBER	1ST 6 MTHS OF FISCAL YR.		
	1968	1968-69	1967-68	
<u>III. DECLARATION THAT STRIKE</u>				
<u>UNLAWFUL</u>				
GRANTED	-	1	1	
DISMISSED	-	2	3	
WITHDRAWN	<u>4</u>	<u>18</u>	<u>24</u>	
TOTAL	<u>4</u>	<u>21</u>	<u>28</u>	
<u>IV. DECLARATION THAT LOCKOUT</u>				
<u>UNLAWFUL</u>				
GRANTED	-	-	-	
DISMISSED	-	1	1	
WITHDRAWN	<u>-</u>	<u>2</u>	<u>10</u>	
TOTAL	<u>-</u>	<u>3</u>	<u>11</u>	
<u>V. CONSENT TO PROSECUTE</u>				
GRANTED	1	9	5	
DISMISSED	-	9	8	
WITHDRAWN	<u>5</u>	<u>33</u>	<u>41</u>	
TOTAL	<u>6</u>	<u>51</u>	<u>54</u>	
<u>VI. COMPLAINT OF UNFAIR</u>				
<u>PRACTICE IN EMPLOYMENT</u>				
<u>(SECTION 65)</u>				
GRANTED	2	5	4	
DISMISSED	1	25	1	
WITHDRAWN	<u>22</u>	<u>76</u>	<u>10</u>	
TOTAL	<u>25</u>	<u>106</u>	<u>15</u>	

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	SEPTEMBER 1968	1ST 6 MTHS 1968-69	FISCAL YR. 1967-68
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	9	9
POST-HEARING VOTE	3	18	24
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	2	6
POST-HEARING VOTE	3	17	21
BALLOTS NOT COUNTED	<u>1</u>	<u>1</u>	<u>1</u>
TOTAL	<u>9</u>	<u>47</u>	<u>61</u>

* INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	SEPTEMBER 1968	1ST 6 MTHS 1968-69	FISCAL YR. 1967-68
*RESPONDENT UNION SUCCESSFUL	-	-	4
RESPONDENT UNION UNSUCCESSFUL	<u>1</u>	<u>8</u>	<u>11</u>
TOTAL	<u>1</u>	<u>8</u>	<u>15</u>

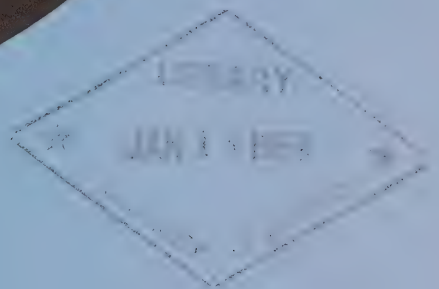
* IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING OCTOBER 1968

BARGAINING AGENTS CERTIFIED DURING OCTOBER

NO VOTE CONDUCTED

13755-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. PHILIP GORDON & ASSOCIATES (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE FURNITURE DEPARTMENT OF THE G.E.M. STORES (1965) AT OTTAWA, SAVE AND EXCEPT FURNITURE DEPARTMENT MANAGER AND PERSONS ABOVE THE RANK OF FURNITURE DEPARTMENT MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

13756-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SENTRY DEPARTMENT STORES LIMITED (OPERATING UNDER THE NAME G.E.M. STORES (1965) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL FRONT OFFICE EMPLOYEES OF THE RESPONDENT AT ITS G.E.M. STORES AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, FRONT OFFICE SUPERVISOR, PERSONS ABOVE THE RANKS OF STORE MANAGER, ASSISTANT STORE MANAGER AND FRONT OFFICE SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD FOR THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 31ST, 1968, AND THE REPRESENTATIONS OF THE PARTIES).

(APPLICANT CERTIFIED WITH RESPECT TO UNIT #1).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN THE FRONT OFFICE OF THE RESPONDENT'S G.E.M. STORES AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, FRONT OFFICE SUPERVISOR, PERSONS ABOVE THE RANKS OF STORE MANAGER, ASSISTANT STORE MANAGER AND FRONT OFFICE SUPERVISOR." (10 EMPLOYEES IN THE UNIT).

(THE APPLICATION AS IT RELATES TO UNIT #2 IS DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 677).

14138-68-R: ST. MARY'S OF THE LAKE HOSPITAL EMPLOYEES' ASSOCIATION (APPLICANT) V. ST. MARY'S OF THE LAKE HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 729 (INTERVENER #1) V. CANADIAN UNION OF GENERAL EMPLOYEES (INTERVENER #2).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 729 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS." (159 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTROENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

(SEE INDEXED ENDORSEMENT PAGE 682).

14729-68-R: LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (A.F.L., C.I.O., C.L.C.) (APPLICANT) V. BELL & HOWELL CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (111 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 695).

14869-68-R: THE CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. HART CHEMICAL LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AT GUELPH, SAVE AND EXCEPT CHIEF ENGINEER, PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

14909-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. NORRENA ELECTRIC LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL ELECTRICIANS AND ELECTRICIANS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT WITHIN A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

14948-68-R: TORONTO-PRINTING PRESSMEN AND ASSISTANTS' UNION No. 10
(APPLICANT) V. KUNTZ & VANDERIET PRESS LTD. (RESPONDENT).

UNIT: "ALL JOURNEYMEN PRESSMEN, ASSISTANT PRESSMEN AND THEIR APPRENTICES EMPLOYED IN THE PRESS ROOM OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN." (4 EMPLOYEES IN THE UNIT).

15027-68-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA (APPLICANT) V. CLAUDE ABRAMS INDUSTRIES LTD. OPERATING AS PUBLIC OPTICAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT LICENCED OPTICIANS, OPTOMETRISTS, FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

15035-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. THE W. S. TYLER COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT IN ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ONE SECRETARY TO EACH OF THE FOLLOWING: PRESIDENT AND GENERAL MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 6399, UNITED STEELWORKERS OF AMERICA." (28 EMPLOYEES IN THE UNIT).

(AGREEMENT OF THE PARTIES).

15068-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. POL CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

FOR PURPOSES OF CLARITY THE BOARD DECLARED THAT CARPENTERS' HELPERS ARE INCLUDED IN THE TERM "LABOURERS".

15082-68-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO-CLC (APPLICANT) V. KAYSER-ROTH INDUSTRIES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (32 EMPLOYEES IN THE UNIT).

15086-68-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, A.F.L., C.I.O., C.L.C. LOCAL 756, ST. CATHARINES, ONT. (APPLICANT) V. FORT ERIE HOTEL (RESPONDENT).

UNIT: "ALL WAITERS, BARTENDERS AND TAPMEN IN THE EMPLOY OF THE RESPONDENT AT FORT ERIE, SAVE AND EXCEPT OWNERS AND MANAGERS." (3 EMPLOYEES IN THE UNIT).

15088-68-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DUGGAN FUELS LIMITED (RESPONDENT). (4 EMPLOYEES IN THE UNIT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT MIDLAND AND AT TAY TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 724).

15089-68-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ROCK DRILL ROD CO. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (28 EMPLOYEES IN THE UNIT).

15095-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. NARONO HOLDING LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15101-68-R: THE AUTOMOBILE SALESMEN'S ASSOCIATION (APPLICANT) V. WEBSTER MOTORS WINDSOR LIMITED (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SALES MANAGERS AND PERSONS ABOVE THE RANK OF SALES MANAGER." (18 EMPLOYEES IN THE UNIT).

15102-68-R: THE AUTOMOBILE SALESMEN'S ASSOCIATION (APPLICANT) V. ESSEX FARMERS LIMITED (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT AT WINDSOR SAVE AND EXCEPT SALES MANAGERS AND PERSONS ABOVE THE RANK OF SALES MANAGER." (7 EMPLOYEES IN THE UNIT).

15103-68-R: THE AUTOMOBILE SALESMEN'S ASSOCIATION (APPLICANT) V.
CLEARWATER CHRYSLER DODGE LTD. (RESPONDENT) V. EMPLOYEE (OBJECTOR).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SALES MANAGERS AND PERSONS ABOVE THE RANK OF SALES MANAGER." (12 EMPLOYEES IN THE UNIT).

15113-68-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA (APPLICANT) V. WERNER GOTTSCHAU MASONRY (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

15114-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. TOLEDO SCALE COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS LONDON BRANCH OFFICE, SAVE AND EXCEPT SERVICE SUPERVISOR, PERSONS ABOVE THE RANK OF SERVICE SUPERVISOR AND OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15125-68-R: LOCAL # 28 INTERNATIONAL BROTHERHOOD OF BOOKBINDERS (APPLICANT) V. VAUGHAN PRINTING & LITHOGRAPHING LTD. (RESPONDENT).

UNIT: "ALL JOURNEYMEN AND JOURNEYWOMEN BOOKBINDERS AND THEIR APPRENTICES EMPLOYED BY THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (7 EMPLOYEES IN THE UNIT).

15126-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FAIRGRIEVE & SON, LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OUTSIDE SERVICEMEN, EXPEDITER-TIMEKEEPER, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (288 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15129-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. RENE GOULET CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (21 EMPLOYEES IN THE UNIT).

15132-68-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (20 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES AS CONTAINED IN THE TELEGRAM FROM THE APPLICANT DATED OCTOBER 16TH, 1968 AND THE TELEGRAM FROM THE RESPONDENT DATED OCTOBER 18TH, 1968 THAT PERSONS CLASSIFIED BY THE RESPONDENT AS COMMISSARY WORKERS ARE NOT INCLUDED IN THE BARGAINING UNIT.

15136-68-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) V. PARKER BROTHERS GAMES LIMITED (RESPONDENT).

UNIT: "ALL OF THE EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO AND VAUGHAN TOWNSHIP PLANTS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (55 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE CIRCUMSTANCES).

(SEE INDEXED ENDORSEMENT PAGE 728).

15137-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SPEEDRACK LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BURLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (27 EMPLOYEES IN THE UNIT).

15139-68-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL UNION No. 124 (APPLICANT) V. PROTECTIVE PLASTICS LIMITED (RESPONDENT).

UNIT: "ALL PLASTERERS AND PLASTERERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15146-68-R: INTERNATIONAL CHEMICAL WORKERS' UNION (APPLICANT) V. IMPERIAL LEAF TOBACCO COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AYLMEY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, SECURITY GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS EMPLOYED ON A SEASONAL BASIS." (30 EMPLOYEES IN THE UNIT).

15147-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ZENITH ELECTROPLATING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (34 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES).

15153-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. COMCO METAL PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ORANGEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (134 EMPLOYEES IN THE UNIT).

15158-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. CATERPILLAR OF CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT MISSISSAUGA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (78 EMPLOYEES IN THE UNIT).

15159-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. PISAPIA CONSTRUCTION INCORPORATED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (8 EMPLOYEES IN THE UNIT).

15160-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ATCO (QUEBEC) LTEE. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15165-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. LILLISTON-CANADA, LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OAKVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (18 EMPLOYEES IN THE UNIT).

15166-68-R: CANADIAN TRANSPORTATION WORKERS' UNION No. 189, N.C.C.L.
(APPLICANT) V. CANAL CARTAGE (1968) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF THE RESPONDENT'S TERMINAL AT NIAGARA FALLS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, DISPATCHERS, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (11 EMPLOYEES IN THE UNIT).

15170-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880
(APPLICANT) V. CORPORATION OF THE TOWNSHIP OF COLCHESTER SOUTH
(RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS ROAD DEPARTMENT, SAVE AND EXCEPT SUPERINTENDENT, PERSONS ABOVE THE RANK OF SUPERINTENDENT AND CLERICAL STAFF." (2 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15172-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. SUN LIFE ASSURANCE COMPANY OF CANADA (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT AT ITS PREMISES AT 200 UNIVERSITY AVENUE, TORONTO, SAVE AND EXCEPT CHIEF ENGINEER, PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

15173-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #2307 (APPLICANT) V. BALDOCK ENGINEERING AND CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15174-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA
(APPLICANT) V. A. FRENCH & ASSOCIATES (RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS).

UNIT: "ALL CARPENTERS, CARPENTERS' APPRENTICES AND CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF KENORA, INCLUDING THE PATRICIA PORTION, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

15181-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 1988 (APPLICANT) V. LOOBY CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LANARK, THE TOWNSHIPS OF NORTH CROSBY, SOUTH CROSBY, SOUTH BURGESS, BASTARD, SOUTH ELMSLEY AND KITLEY IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF WOLFORD, OXFORD AND SOUTH GOWER IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15188-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036
(APPLICANT) V. PALMER PAVING AND CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE CITY OF SAULT STE. MARIE, THE TOWNSHIP OF PRINCE AND THE TOWNSHIPS IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15193-68-R: WAREHOUSEMEN & MISCELLANEOUS DRIVERS UNION LOCAL 419
AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ANTHONY NATALE
(RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF."
(6 EMPLOYEES IN THE UNIT).

15196-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ALDBOROUGH
TOWNSHIP PUBLIC SCHOOL AREA BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF ALDBOROUGH TOWNSHIP PUBLIC SCHOOL AREA BOARD, ENGAGED IN MAINTENANCE SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT THE SUPERVISOR OF THE SCHOOL BUS SYSTEM AND MECHANIC AND OFFICE STAFF."
(7 EMPLOYEES IN THE UNIT).

15197-68-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED
EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTH-
HOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(APPLICANT) V. EASTWOOD FOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL COMMISSARY EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FORELADIES, PERSONS ABOVE THE RANK OF FORELADY, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS." (11 EMPLOYEES IN THE UNIT).

15199-68-R: UNITED CEMENT, LIME AND GYPSUM WORKERS INTERNATIONAL UNION,
C.L.C. (APPLICANT) V. INDUSTRIAL MINERALS OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE ONTARIO SILICA DIVISION OF THE RESPONDENT IN THE TOWNSHIP OF KILLARNEY, MANITOULIN DISTRICT AND IN THE TOWN OF MIDLAND, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15202-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (APPLICANT) V. ATLANTIC PACKAGING COMPANY (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS EMPLOYED BY THE RESPONDENT IN THE BOILER ROOM AT ITS PLANT AT SCARBOROUGH, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

15209-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. CONSTRUCTEC INC. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

15210-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 498 (APPLICANT) V. W. R. ROSS BUILDING CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF BRANT AND NORFOLK, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15212-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. EGANVILLE MILK TRANSPORT (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT EGANVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (8 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15215-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #249 (APPLICANT) V. KONVEY CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15223-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. R. E. FERGUSON LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15231-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA LOCAL UNION 597 (APPLICANT) V. AMERICAN CONSTRUCTION (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

15245-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (APPLICANT) V. NATEAG LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF ELIZABETHTOWN IN THE COUNTY OF LEEDS AND THE TOWNSHIPS OF AUGUSTA AND EDWARDSBURGH IN THE COUNTY OF GRENVILLE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15250-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) V. ARGO CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15253-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 247 (APPLICANT) V. ARGO CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

15070-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796
(APPLICANT) V. WILLIAM NEILSON LIMITED (RESPONDENT) V. THE CANADIAN
UNION OF OPERATING ENGINEERS (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR
HELPERS EMPLOYED BY THE RESPONDENT IN ITS BOILER ROOM AND ENGINE ROOM
AT ITS GLADSTONE AVENUE PLANT AT TORONTO, SAVE AND EXCEPT THE CHIEF
ENGINEER." (15 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE
ASSISTANT CHIEF ENGINEER IS NOT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	13
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	0

15081-68-R: TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC (APPLICANT)
V. KAYSER-ROTH OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 203 BATHURST STREET, LONDON,
SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN
AND FORELADY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD." (117 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SHIPPER-
RECEIVER, NURSE, BOILERMAN AND WATCHMAN ARE EMPLOYEES OF THE RESPONDENT
INCLUDED IN THE BARGAINING UNIT, AND THAT DEPARTMENT HEADS, INDUSTRIAL
ENGINEERING PERSONNEL, PRODUCTION CLERKS AND HOME WORKERS ARE NOT EM-
PLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. (117 EM-
PLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	111
NUMBER OF PERSONS WHO CAST BALLOTS	108
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	71
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	35

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

14558-68-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. NORTH
YORK GENERAL HOSPITAL (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING

ENGINEERS LOCAL 796 (INTERVENER #1) v. CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TORONTO, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, UNDERGRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS AND FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR AND FOREMAN, CHIEF ENGINEER, STATIONARY ENGINEERS COVERED BY A SUBSISTING CERTIFICATE OF THE ONTARIO LABOUR RELATIONS BOARD, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (157 EMPLOYEES IN THE UNIT).

THE BOARD FURTHER STATED IN ITS DECISION DATED JUNE 10TH, 1968:

3. THAT THE TERM "TECHNICAL PERSONNEL" COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.
4. THAT SPECIMEN COLLECTION TECHNICIANS, MORGUE TECHNICIANS, AND STUDENTS TAKING A FORMAL COURSE WHICH LEADS TO THEIR CERTIFICATION AS REGISTERED TECHNICIAN ARE NOT INCLUDED IN THE BARGAINING UNIT.
5. THAT WARD CLERKS, CASHIERS, SWITCHBOARD OPERATORS, AND SPECIAL DIET CLERKS ARE INCLUDED IN THE TERM "OFFICE STAFF", AND THAT THE HEAD CHEF IS EXCLUDED FROM THE BARGAINING UNIT AS BEING A SUPERVISOR OR FOREMAN.

NUMBER OF NAMES OF PERSONS ON REVISED	157
VOTERS' LIST	
NUMBER OF PERSONS WHO CAST BALLOTS	130
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	104
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	26

14630-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. FERRANTI-PACKARD ELECTRIC LIMITED (RESPONDENT) v. THE SALARIED EMPLOYEES' ASSOCIATION OF FERRANTI-PACKARD ST. CATHARINES DIVISION (INTERVENER).

UNIT: "ALL OFFICE, CLERICAL AND TECHNICAL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, ASSISTANT SUPERVISOR DIRECT COST DEPARTMENT, ONE SECRETARY TO EACH OF THE VICE-PRESIDENT AND GENERAL MANAGER, INDUSTRIAL RELATIONS MANAGER AND PRODUCTION MANAGER, PLANT NURSE, OFFICE CLEANING

STAFF, PLANT SECURITY, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ON A CO-OPERATIVE TRAINING BASIS AND PERSONS BOUND BY THE SUBSISTING COLLECTIVE AGREEMENTS BETWEEN THE RESPONDENT AND THE DRAFTSMEN'S ASSOCIATION OF ONTARIO LOCAL 164 A.F.T.E., AFL-CIO FERRANTI-PACKARD BRANCH AND BETWEEN THE RESPONDENT AND UNITED STEELWORKERS OF AMERICA, LOCAL 5788." (67 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THAT THE PARTIES HAVE AGREED:

- (1) THAT DESIGN ENGINEERING ASSISTANTS, TECHNICIANS 1 AND THE SWITCHBOARD RECEPTIONIST ARE INCLUDED IN THE BARGAINING UNIT.
- (2) THAT THE SECRETARY TO THE PRODUCTION MANAGER CARRIES OUT DUTIES WITH RESPECT TO LABOUR RELATIONS AND SHOULD BE EXCLUDED FROM THE BARGAINING UNIT.
- (3) THAT B. PORTSMOUTH, SYSTEMS ANALYST, SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT BECAUSE HE WAS NOT AN EMPLOYEE OF THE ST. CATHARINES DIVISION OF THE RESPONDENT.
- (4) THAT T. R. JONES WAS NOT A METHODS MAN BUT A CLERK ON THE DATE OF THE FILING OF THE APPLICATION AND SHOULD THEREFORE BE INCLUDED IN THE BARGAINING UNIT.

THE BOARD FURTHER DECLARED THAT PURSUANT TO ITS FINDING IN PARAGRAPH 12 OF ITS DECISION DATED SEPTEMBER 20TH, 1968, THAT THE TIME STUDY MEN AND THE METHODS MEN ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	60
NUMBER OF PERSONS WHO CAST BALLOTS	59
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	52
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	7

14652-68-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. SCARBOROUGH CENTENARY HOSPITAL ASSOCIATION (RESPONDENT).

UNIT: "ALL LAY EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL IN THE BOROUGH OF SCARBOROUGH, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE AND UNDERGRADUATE NURSES, GRADUATE AND UNDERGRADUATE PHARMACISTS, GRADUATE AND UNDERGRADUATE DIETITIANS, TECHNICAL PERSONNEL, OFFICE STAFF, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT, PERSONS REGULARLY EMPLOYED FOR NOTMORE THAN TWENTY-FOUR HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL

VACATION PERIOD, AND STUDENTS TAKING A FORMAL COURSE WHICH LEADS TO THEIR CERTIFICATION AS REGISTERED TECHNICIANS." (239 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	210
NUMBER OF PERSONS WHO CAST BALLOTS	170
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	138
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	30

14805-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA (APPLICANT)
V. CURRIE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF ITS PLANT AT HAMILTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, LABORATORY, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (24 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	22
NUMBER OF PERSONS WHO CAST BALLOTS	22
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	18
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

14849-68-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. NATIONAL STARCH AND CHEMICAL CO. (CANADA) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (42 EMPLOYEES IN THE UNIT).

THE BOARD FURTHER STATED IN ITS DECISION DATED SEPTEMBER 24TH, 1968.

THAT LABORATORY TECHNICIANS AND SERVICE TECHNICIANS ENGAGED IN QUALITY CONTROL WORK ARE INCLUDED IN THE BARGAINING UNIT.

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	44
NUMBER OF PERSONS WHO CAST BALLOTS	44
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	35
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	9

14931-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V. CONSOLIDATED-BATHURST PACKAGING LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT ST. THOMAS, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISOR, INDUSTRIAL ENGINEER AND ONE SECRETARY TO MANAGERIAL PERSONNEL." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	13
NUMBER OF PERSONS WHO CAST BALLOTS	13
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	7
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	6

14953-68-R: OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION (APPLICANT) V. L.O.F. GLASS OF CANADA LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796 (INTERVENER #1) V. UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA, AFL-CIO-CLC (INTERVENER #2).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT COLLINGWOOD, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS COVERED UNDER A CERTIFICATE BY THE ONTARIO LABOUR RELATIONS BOARD." (182 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	258
NUMBER OF PERSONS WHO CAST BALLOTS	237
BALLOTS SEGREGATED AND NOT COUNTED	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	105
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER #2	131

14962-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. EMPIRE MAINTENANCE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN CLEANING SERVICES AT OTTAWA AND IN THE TOWNSHIP OF NEPEAN, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (74 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		55
NUMBER OF PERSONS WHO CAST BALLOTS	54	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	30	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	24	

15031-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA AFL-CIO-CLC (APPLICANT) V. RIVERSIDE POULTRY COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (INTERVENER).

UNIT: "ALL STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS IN THE EMPLOY OF THE RESPONDENT IN ITS BOILER ROOM AT LONDON, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (5 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		4
NUMBER OF PERSONS WHO CAST BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF INTERVENER	3	

(INTERVENER CERTIFIED)

(THE APPLICATION OF THE APPLICANT DISMISSED).

15091-68-R: SUDBURY TYPOGRAPHICAL UNION No. 846 (ITU) (APPLICANT) V. TEMISKAMING PRINTING COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NEW LISKEARD, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF, EDITORS, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (22 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		22
NUMBER OF PERSONS WHO CAST BALLOTS	22	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	17	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING OCTOBER

NO VOTE CONDUCTED

14573-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC (APPLICANT) V. SAM BUCOVETSKY STORES LIMITED (RESPONDENT). (20 EMPLOYEES).

14629-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE GOVERNORS OF THE UNIVERSITY OF TORONTO (RESPONDENT). (21 EMPLOYEES).

14677-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. FIRE-STONE STEEL PRODUCTS OF CANADA LIMITED (RESPONDENT) V. LOCAL 111 OF THE INTERNATIONAL COOPERS UNION OF NORTH AMERICA (INTERVENER). (237 EMPLOYEES)

(SEE INDEXED ENDORSEMENT PAGE 685).

14850-68-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. ZEHR'S MARKETS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS RETAIL STORES IN KITCHENER, SAVE AND EXCEPT STORE MANAGERS, ASSISTANT STORE MANAGERS, PERSONS ABOVE THE RANKS OF STORE MANAGER AND ASSISTANT STORE MANAGER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (119 EMPLOYEES IN THE UNIT).

15018-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183 (APPLICANT) V. FAIRWAY IRRIGATION LIMITED (RESPONDENT). (15 EMPLOYEES).

15037-68-R: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. SIENA FOODS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (26 EMPLOYEES).

15049-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. UNITED COUNTIES OF NORTHUMBERLAND & DURHAM (RESPONDENT). (61 EMPLOYEES).

15085-68-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA AFL-CIO, C.L.C. LOCAL 278 (APPLICANT) V. METRO WINDSOR CATERING CO. LTD. VENDING DIVISION (RESPONDENT) V. TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 880 (INTERVENER). (5 EMPLOYEES).

15130-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL UNION NO. 721 (APPLICANT) V. OTTAWA IRON WORKERS LIMITED (RESPONDENT). (NO EMPLOYEES).

15131-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 498 (APPLICANT) V. DIETRICH & KOEHLER CONSTRUCTION LIMITED (RESPONDENT). (6 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 728).

15154-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1089 (APPLICANT) V. COMBUSTION ENGINEERING-SUPERHEATER LTD. (RESPONDENT). (8 EMPLOYEES).

15155-68-R: OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 124 (APPLICANT) V. LAVICTOIRE FORMING AND CONSTRUCTION LTD. (RESPONDENT). (2 EMPLOYEES).

15156-68-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938, OF THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA (APPLICANT) V. N. CLARKE TRANSPORT LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (4 EMPLOYEES).

15163-68-R: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, LOCAL 756, AFL, CIO, CLC, ST. CATHARINES, ONT. (APPLICANT) V. HOTEL LEONARD, 259 ST PAUL ST. ST. CATHARINES ONT. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (NO EMPLOYEES).

15169-68-R: UNITED TEXTILE WORKERS OF AMERICA (APPLICANT) V. PARKSPIN LIMITED (RESPONDENT). (58 EMPLOYEES).

15183-68-R: TEAMSTERS' LOCAL UNION NO. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T., (APPLICANT) V. NORTH BAY CONCRETE & SUPPLY COMPANY (RESPONDENT). (5 EMPLOYEES).

15192-68-R: LOCAL UNION 2028, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. THE PUBLIC UTILITIES COMMISSION OF THE TOWN OF BOWMANVILLE (RESPONDENT). (6 EMPLOYEES).

15201-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. DO-ALL PAINTING & GENERAL CONTRACTOR (RESPONDENT). (3 EMPLOYEES).

15208-68-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CARR'S ELECTRIC LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER). (3 EMPLOYEES).

15211-68-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 67 (APPLICANT) V. MONO MECHANICAL CONTRACTING LIMITED (RESPONDENT). (5 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 729).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

14778-68-R: INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF NORTH AMERICA (APPLICANT) V. BAXTER PUBLICATIONS (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS PLANT AT GRAVENHURST, SAVE AND EXCEPT MANAGER AND PERSONS ABOVE THE RANK OF MANAGER, OFFICE AND SALES STAFF." (10 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		7
NUMBER OF PERSONS WHO CAST BALLOTS		7
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	1	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	5	

14993-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. COPP BUILDERS' SUPPLY COMPANY LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT AND WORKING OUT OF LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE, STORE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (14 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED		
VOTERS' LIST		11
NUMBER OF PERSONS WHO CAST BALLOTS		11
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF APPLICANT	4	
NUMBER OF BALLOTS MARKED AGAINST		
APPLICANT	7	

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING OCTOBER

15051-68-R: OPERATIVE PLASTERERS AND CEMENT MASONS INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA LOCAL UNION No. 124, OTTAWA - HULL (APPLICANT) V. CUSTOMOLD FIBERGLASS, DIVISION OF PROTECTIVE TUBES LIMITED (RESPONDENT). (2 EMPLOYEES).

15052-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. DENNIS MANAGEMENT COMPANY (RESPONDENT). (3 EMPLOYEES).

15134-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. CANADIAN MOTOROLA ELECTRONICS COMPANY (RESPONDENT). (150 EMPLOYEES).

15189-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1036 (APPLICANT) V. DOMINION BRIDGE COMPANY LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER). (2 EMPLOYEES).

15221-68-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ACE BOXES LIMITED (RESPONDENT). (4 EMPLOYEES).

15222-68-R: LOCAL UNION NO. 1940, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. SHANTZ & HICKS CONSTRUCTION LIMITED (RESPONDENT). (20 EMPLOYEES).

15224-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. WESTERN CAISSONS LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (INTERVENER #2). (2 EMPLOYEES).

15258-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA LOCAL 183 (APPLICANT) V. MC KAY EXCAVATING LIMITED (RESPONDENT). (6 EMPLOYEES).

15269-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. ATLANTIC PACKAGING COMPANY (RESPONDENT). (3 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING OCTOBER

14637-68-R: LANCE MITCHELL (APPLICANT) V. INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (RESPONDENT) V. LLOYD JOHNSON'S TOWN AND COUNTRY AUTO BODY LIMITED (INTERVENER). (GRANTED).

UNIT: "ALL EMPLOYEES OF LLOYD JOHNSON'S TOWN AND COUNTRY AUTO BODY LIMITED AT SAULT STE. MARIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST
NUMBER OF PERSONS WHO CAST BALLOTS

7
7

NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	3
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	4

14706-68-R: AIDEN WHELAN (APPLICANT) V. BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, AFL-CIO-CLC (RESPONDENT). (GRANTED).

UNIT: "ALL EMPLOYEES OF STEVENSON MEMORIAL HOSPITAL AT ALLISTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOOD SUPERVISORS, CHIEF ENGINEER, CHEF, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (60 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	41
NUMBER OF PERSONS WHO CAST BALLOTS	41
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	40

14956-68-R: ENGINEERS AND MAINTENANCE STAFF AT HUMBER MEMORIAL HOSPITAL (APPLICANT) V. CANADIAN UNION OF OPERATING ENGINEERS (RESPONDENT). (GRANTED).

UNIT: "ALL STATIONARY ENGINEERS AND MAINTENANCE EMPLOYEES EMPLOYED BY THE HUMBER MEMORIAL HOSPITAL ASSOCIATION AT ITS HOSPITAL IN WESTON SAVE AND EXCEPT THE CHIEF ENGINEER, IN ACCORDANCE WITH THE CERTIFICATIONS ISSUED BY THE ONTARIO LABOUR RELATIONS BOARD DATED NOVEMBER 2ND, 1961, AND SEPTEMBER 14TH, 1964." (9 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	9
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	1
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	8

15079-68-R: JOHN VINK (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1450 (RESPONDENT) V. ARNOLD STEELE GENERAL CONTRACTOR (INTERVENER). (12 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 730).

15106-68-R: ROGER LAMBERT, MURRAY FINOCHIO (APPLICANTS) V. HOTEL & RESTAURANT BARTENDERS UNION LOCAL 197 (RESPONDENT). (2 EMPLOYEES). (DISMISSED).

15118-68-R: NORTHERN ENGINEERS & SUPPLY CO. LIMITED (APPLICANT) V. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL 397 (RESPONDENT). (8 EMPLOYEES). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 731).

15151-68-R: JOSEPH H. CORMIER L. CARTIER F. K. VANVOLKENBURG (ASSOCIATE REPRESENTATIVES) (APPLICANTS) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS WAREHOUSEMEN, CHAUFFEURS AND HELPERS OF AMERICA UNION LOCAL 647 (RESPONDENT). (8 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 733).

15157-68-R: JOHN SALAJKA (APPLICANT) V. RETAIL CLERKS INTERNATIONAL ASSOCIATION LOCAL 206 (RESPONDENT). (10 EMPLOYEES). (GRANTED).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

OCTOBER

14832-68-U: CANADA BRICK COMPANY (APPLICANT) V. J. AUGUSTO ET AL (RESPONDENTS). (WITHDRAWN).

14833-68-U: CANADA BRICK COMPANY (APPLICANT) V. UNITED GLASS & CERAMIC WORKERS OF NORTH AMERICA AND ITS LOCAL 225 (RESPONDENT). (WITHDRAWN).

15064-68-U: G. J. RANEY LIMITED AND C. T. BRADY LIMITED, A PARTNERSHIP CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF RANEY, BRADY (APPLICANT) V. J. MARSICO, A. CORREIA, J. SILVA, E. SILVA, T. SILVA, M. FERNANDES, V. FREITAS, F. PACHECO AND J. COSTA (RESPONDENTS). (WITHDRAWN).

15065-68-U: G. J. RANEY LIMITED AND C. T. BRADY LIMITED, A PARTNERSHIP CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF RANEY, BRADY (APPLICANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (RESPONDENT). (WITHDRAWN).

15161-68-U: SINGER MECHANICAL CONTRACTORS COMPANY LIMITED (APPLICANT) V. J. BOLAND, ET AL (AS PER ATTACHED LIST) (RESPONDENTS). (WITHDRAWN).

15162-68-U: KEITH W. BRADLEY PLUMBING & HEATING COMPANY LIMITED (APPLICANT) V. DAN WATERS, T. LYNN, M. GRAY, S. DUPUIS, J. E. BURNS AND E. BERUBE (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING OCTOBER

14807-68-U: AMALGAMATED JEWELRY WORKERS' UNION, TORONTO (APPLICANT) V. BARI BROTHERS (SIDBAR JEWELRY) (RESPONDENT). (WITHDRAWN).

14834-68-U: CANADA BRICK COMPANY (APPLICANT) V. JAMES PERNA ET AL (RESPONDENTS). (WITHDRAWN).

14835-68-U: CANADA BRICK COMPANY (APPLICANT) V. J. AUGUSTO ET AL (RESPONDENTS). (WITHDRAWN).

15066-68-U: G. J. RANEY LIMITED AND C. T. BRADY LIMITED, A PARTNERSHIP CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF RANEY, BRADY (APPLICANT) V. J. NARSICO, A. CORREIA, J. SILVA, E. SILVA, T. SILVA, M. FERNANDES, V. FREITAS, F. PACHECO AND J. COSTA (RESPONDENTS). (WITHDRAWN).

15067-68-U: G. J. RANEY LIMITED AND C. T. BRADY LIMITED, A PARTNERSHIP CARRYING ON BUSINESS UNDER THE FIRM NAME AND STYLE OF RANEY, BRADY (APPLICANT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183, AND GERRY GALLAGHER (RESPONDENTS). (WITHDRAWN).

15176-68-U: BATTLER CARTAGE LIMITED (APPLICANT) V. JOHN CHALMERS, IRVIN WEBER, ROLAND LUTZ, WILLARD SHANTZ, HELMUTH GOERTZ, HAROLD PRIVATT, CLARENCE MITCHELL, CALVIN HOLTZHAUER, FRED CRABB, ED ALBRECHT (RESPONDENTS). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

OCTOBER

14191-67-U: UNITED STEELWORKERS OF AMERICA AND ITS LOCAL UNION 2729 (COMPLAINANTS) V. HAYES-DANA LIMITED; V.N.G. AUTO PARTS LIMITED (RESPONDENTS). (DISMISSED).

14818-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (COMPLAINANT) V. POWELL AGRI-SYSTEMS LIMITED (RESPONDENT).

- AND -

14928-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (COMPLAINANT) V. POWELL AGRI-SYSTEMS LIMITED (RESPONDENT).

(SEE INDEXED ENDORSEMENT PAGE 735).

14927-68-U: JOHN BALZER (COMPLAINANT) V. GENERAL TRUCK DRIVERS UNION - LOCAL 879 AND KNIPFEL CARTAGE COMPANY LIMITED AND THIBODEAU EXPRESS LIMITED (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 742).

14955-68-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA (COMPLAINANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED (RESPONDENT). (DISMISSED).

15003-68-U: CANADIAN UNION OF PUBLIC EMPLOYEES (COMPLAINANT) V. EAST MIDDLESEX DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (WITHDRAWN).

15036-68-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SIENA FOODS LIMITED (RESPONDENT). (WITHDRAWN).

15048-68-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SIENA FOODS LIMITED (RESPONDENT). (WITHDRAWN).

15107-68-U: AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SIENA FOODS LIMITED (RESPONDENT). (WITHDRAWN).

15042-68-U: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 352 (COMPLAINANT) V. MIDLAND FUELS LIMITED (RESPONDENT). (WITHDRAWN).

15057-68-U: EDMUND JORDAN (COMPLAINANT) V. DANSON CORPORATION (RESPONDENT). (WITHDRAWN).

15090-68-U: BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 264 (COMPLAINANT) V. THE GREAT ATLANTIC AND PACIFIC TEA CO. LIMITED (KNOWN AS A.& P. FOOD STORES) (RESPONDENT). (WITHDRAWN).

15112-68-U: SUDBURY TYPOGRAPHICAL UNION (I.T.U.) LOCAL 846 (COMPLAINANT) V. THE TEMISKAMING PRINTING COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

15119-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. TUBCO LAMP PARTS LTD. (RESPONDENT). (WITHDRAWN).

15152-68-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. WILMOT'S DAIRY LIMITED (RESPONDENT). (WITHDRAWN).

15185-68-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA (COMPLAINANT) V. ABRAMS INDUSTRIES LIMITED OPERATING AS PUBLIC OPTICAL (RESPONDENT). (WITHDRAWN).

APPLICATION UNDER SECTION 47A DISPOSED OF DURING OCTOBER

15145-68-M: THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.-A.F.L.-C.I.O.) AND LOCAL 252 OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.-A.F.L.-C.I.O.) (APPLICANTS) V. CANADIAN TRAILMOBILE LIMITED; BRANTFORD TRAILER & BODY LIMITED; INTERNATIONAL MOLDERS AND ALLIED WORKERS UNION THROUGH ITS LOCAL 28 (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING OCTOBER

14696-68-M: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AND LOCAL 35 (APPLICANT) V. ONTARIO STEEL PRODUCTS COMPANY LIMITED, CHATHAM DIVISION (RESPONDENT).

REFERENCE TO BOARD PURSUANT TO SECTION 79A

13991-67-M: THE EAST YORK CIVIC FOREMEN'S UNION No. 820 (TRADE UNION) V. BOROUGH OF EAST YORK (FORMERLY THE CORPORATION OF THE TOWNSHIP OF EAST YORK) (EMPLOYER).

(SEE INDEXED ENDORSEMENT PAGE 746).

JURISDICTIONAL DISPUTES

15076(A)-68-JD: POOLE CONSTRUCTION LIMITED (COMPLAINANT) V. WESTERN ONTARIO DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS LOCAL 1946 AND D. NOBLE AND LABOURERS INTERNATIONAL UNION LOCAL 1059 (RESPONDENTS). (WITHDRAWN).

15076(B)-68-JD: POOLE CONSTRUCTION LIMITED (APPLICANT) V. WESTERN ONTARIO DISTRICT COUNCIL OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS, LOCAL 1946 AND D. NOBLE AND LABOURERS INTERNATIONAL UNION, LOCAL 1059 (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

14126-67-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. S.I.S. PROTECTION CO., A DIVISION OF SECURITY & INVESTIGATION SERVICES LTD. (RESPONDENT). (REQUEST DENIED).

14177-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED (RESPONDENT) V. A. & M. EMPLOYEES' ASSOCIATION (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 752).

14567-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. S.I.S. PROTECTION CO., A DIVISION OF SECURITY & INVESTIGATION SERVICES LTD. (RESPONDENT). (REQUEST DENIED).

14709-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. KNIGHT SECURITY GUARDS LIMITED (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 757).

14739-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. RIDGE-TOWN DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 758).

14771-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. KNIGHT SECURITY GUARDS LIMITED (RESPONDENT). (REQUEST DENIED).

14855-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WALLACEBURG DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 761).

15093-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ARNOLD STEEL & ASSOCIATES LTD. (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #1450 (INTERVENER). (REQUEST DENIED).

15127-68-R: LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. BERGHOUT CONSTRUCTION LIMITED (RESPONDENT). (REQUEST DENIED).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

13998-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT). (REQUEST DENIED).

- AND -

13939-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT). (REQUEST DENIED).
(SEE INDEXED ENDORSEMENT PAGE 761).

INDEXED ENDORSEMENTS - CERTIFICATION

13756-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SENTRY DEPARTMENT STORES LIMITED (OPERATING UNDER THE NAME G.E.M. STORES(1965)) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: IAN G. SCOTT FOR THE APPLICANT, W. M. TEMPLE, A. J. FOSTER, A. L. JAMIESON AND D. A. FRASER FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: SEPTEMBER 5, 1968.

. . .

2. HAVING REGARD FOR THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 31ST, 1968, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, THE BOARD FURTHER FINDS THAT ALL FRONT OFFICE EMPLOYEES OF THE RESPONDENT AT ITS G.E.M. STORES AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, FRONT OFFICE SUPERVISOR, PERSONS ABOVE THE RANKS OF STORE MANAGER, ASSISTANT STORE MANAGER AND FRONT OFFICE SUPERVISOR, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING, HEREINAFTER REFERRED TO AS BARGAINING UNIT #1.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD IN THE FRONT OFFICE OF THE RESPONDENT'S G.E.M. STORES AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, FRONT OFFICE SUPERVISOR, PERSONS ABOVE THE RANKS OF STORE MANAGER, ASSISTANT STORE MANAGER AND FRONT OFFICE SUPERVISOR, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING HEREINAFTER REFERRED TO AS BARGAINING UNIT #2.

4. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT MRS. E. KELLY IS A FRONT OFFICE SUPERVISOR AND EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS NOT INCLUDED IN THE BARGAINING UNIT.

5. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER DATED MAY 31ST, 1968, AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT THERETO, AND APPLYING THE CRITERIA ENUNCIATED BY THE BOARD IN THE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379, THE BOARD FINDS THAT E. CHISHOLM, S. HUNT AND M. REARDON, PERSONS CLASSIFIED BY THE RESPONDENT AS CASHIERS IN THE RESPONDENT'S FRONT OFFICE, ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #2, AT THE TIME THE APPLICATION WAS MADE,

WERE MEMBERS OF THE APPLICANT ON OCTOBER 25TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. THE APPLICATION AS IT RELATES TO BARGAINING UNIT #2 IS THEREFORE DISMISSED.

8. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING AT OTTAWA TO AFFORD THE OBJECTORS AN OPPORTUNITY TO ADDUCE EVIDENCE AS TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED ON THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION WITH RESPECT TO BARGAINING UNIT #1, IN ORDER TO PERMIT THE BOARD TO COMPLETE ITS USUAL INQUIRY INTO THE PETITION FILED IN THIS CASE AND TO HEAR EVIDENCE WITH RESPECT TO THE CHARGES MADE BY THE APPLICANT AS CONTAINED IN THE APPLICANT'S LETTER DATED OCTOBER 27, 1967 IN THIS MATTER AND ALL OUTSTANDING ISSUES.

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: IAN SCOTT AND THOMAS L. REES FOR THE APPLICANT, W. M. TEMPLE AND A. JAMIESON FOR THE RESPONDENT, JAMES W. TOUHEY AND MRS. RAE COWHERD FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: OCTOBER 28, 1968.

1. THIS MATTER CAME ON FOR HEARING AT OTTAWA ON OCTOBER 4TH, 1968, TO AFFORD THE OBJECTORS AN OPPORTUNITY TO ADDUCE EVIDENCE AS TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED ON THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION WITH RESPECT TO BARGAINING UNIT #1, IN ORDER TO PERMIT THE BOARD TO COMPLETE ITS USUAL INQUIRY INTO THE PETITION FILED IN THIS CASE AND TO HEAR EVIDENCE WITH RESPECT TO THE CHARGES MADE BY THE APPLICANT AS CONTAINED IN THE APPLICANT'S LETTER DATED OCTOBER 27TH, 1967, IN THIS MATTER, AND ALL OUTSTANDING ISSUES.

2. AT THE FIRST HEARING ON NOVEMBER 1ST, 1967, MRS. RAE COWHERD IDENTIFIED THE PETITION AND TESTIFIED THAT SHE OBTAINED THE DOCUMENT FROM MR. TOUHEY THE OBJECTORS' LAWYER, BUT HAD NO KNOWLEDGE AS TO THE IDENTITY OF THE PERSON WHO GAVE MR. TOUHEY INSTRUCTIONS TO PREPARE THE DOCUMENT. AT THE HEARING ON OCTOBER 4TH, MRS. COWHERD CONFIRMED THE TESTIMONY OUTLINED ABOVE AND WENT ON TO EXPLAIN THAT THERE HAD BEEN AN EARLIER PETITION CIRCULATED IN OPPOSITION TO THE

APPLICATION WHICH HAD BEEN PREPARED BY MR. TOUHEY BUT THAT THE EMPLOYEE WHO HAD CIRCULATED THIS DOCUMENT APPARENTLY HAD A CHANGE OF HEART AND DESTROYED THE DOCUMENT. WHEN MRS. COWHERD DISCOVERED THAT THE FIRST PETITION HAD BEEN DESTROYED SHE ASCERTAINED THAT PETITION HAD BEEN PREPARED BY MR. TOUHEY AND SHE CONTACTED MR. TOUHEY AND OBTAINED A COPY OF THE ORIGINAL DOCUMENT PREPARED BY HIM. MRS. COWHERD CIRCULATED THIS DOCUMENT AMONG THE SAME EMPLOYEES WHO HAD SIGNED THE FIRST DOCUMENT A FEW DAYS PREVIOUSLY. NO EVIDENCE WAS CALLED CONCERNING THE ORIGATION AND CIRCULATION OF THE FIRST PETITION.

3. THE BOARD FINDS ON THE FACTS OF THIS CASE THAT THE DOCUMENT NOW BEFORE THE BOARD WHICH HAS BEEN FILED AS EVIDENCE OF OPPOSITION TO THIS APPLICATION ORIGINATED AS A RESULT OF THE DESTRUCTION OF THE FIRST PETITION AND IS THEREFORE INTIMATELY CONNECTED THEREWITH. THERE CAN BE NO DOUBT THAT THE PERSONS WHO SIGNED THE DOCUMENT NOW BEFORE THE BOARD HAD BEEN PRECONDITIONED BY THE CIRCULATION OF THE FIRST DOCUMENT. IN THESE CIRCUMSTANCES, THE ORIGATION OF THE DOCUMENT NOW BEFORE THE BOARD IS SO INTIMATELY CONNECTED WITH THE FIRST DOCUMENT THAT IN ORDER TO BE SATISFIED CONCERNING THE ORIGATION OF THE DOCUMENT BEFORE US, WE MUST ALSO BE SATISFIED CONCERNING THE ORIGATION OF THE FIRST DOCUMENT WHICH WAS CIRCULATED IN OPPOSITION TO THE APPLICATION. SINCE WE HAVE NO EVIDENCE CONCERNING THE ORIGATION OF THE FIRST DOCUMENT WE MUST FIND THAT THE OBJECTORS HAVE FAILED TO SATISFY THE BOARD IN ACCORDANCE WITH THE DIRECTION CONTAINED IN FORM 5, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING, AS TO THE CIRCUMSTANCES CONCERNING THE ORIGATION OF THE MATERIAL FILED. IF THE BOARD WERE TO TAKE THE POSITION THAT IT NEED NOT INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE ORIGATION OF AN EARLIER PETITION FROM WHICH THE PETITION BEFORE THE BOARD FLOWED, IT IS READILY APPARENT THAT SUCH PROCEDURE WOULD NOT ONLY BE OPEN TO ABUSE BUT WOULD BE A REFUSAL BY THE BOARD TO TAKE THE NECESSARY STEPS TO SATISFY ITSELF CONCERNING THE ORIGATION OF THE MATERIAL FILED.

4. IN VIEW OF THE CIRCUMSTANCES WHICH LED TO THE ORIGATION OF THE DOCUMENT SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT AND THE FACT THAT NO EVIDENCE WAS CALLED CONCERNING THE ORIGATION OF THE DOCUMENT WHICH LED TO THE PREPARATION OF THE PETITION BEFORE THE BOARD, WE ARE NOT PREPARED TO HOLD THAT THE DOCUMENT WEAKENS THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE IN THIS CASE.

5. IN VIEW OF THE BOARD'S FINDING WITH RESPECT TO THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION, IT WILL NOT BE NECESSARY FOR THE BOARD TO INQUIRE INTO THE ALLEGATIONS OF IMPROPER CONDUCT MADE BY THE APPLICANT CONCERNING THE ORIGATION AND CIRCULATION OF THE DOCUMENT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN BARGAINING UNIT #1 DESCRIBED BY THE BOARD IN ITS DECISION OF SEPTEMBER 5TH, 1968, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 25TH, 1967, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO BARGAINING UNIT #1 IN THIS MATTER.

DECISION OF BOARD MEMBER H. F. IRWIN:

OCTOBER 28, 1968.

1. I DISSENT.

2. MRS. RAE COWHERD, ONE OF THE OBJECTORS TO THIS APPLICATION, GAVE HER EVIDENCE IN A STRAIGHTFORWARD AND CANDID MANNER CONCERNING THE ORIGATION, PREPARATION AND CIRCULATION OF THE PETITION FOR WHICH SHE WAS RESPONSIBLE. THERE IS NO EVIDENCE OF IMPROPER CONDUCT, ASSISTANCE OR INFLUENCE OF ANY KIND WHATSOEVER.

3. MRS. COWHERD STATED THAT SHE HAD SIGNED A PETITION WHICH HAD BEEN CIRCULATED BY ANOTHER EMPLOYEE BUT DID NOT KNOW WHO AUTHORIZED HER COUNSEL, JAMES W. TOUHEY, TO PREPARE IT. THIS IS THE BOARD'S ENQUIRY AND IT MAY MAKE ANY ENQUIRY IT DEEMS NECESSARY TO SATISFY ITSELF THAT THE PETITION CIRCULATED BY MRS. COWHERD WAS NOT WRONGFULLY INFLUENCED BY THE CIRCULATION OF THE FIRST PETITION SPONSORED BY THE OTHER EMPLOYEE. HOWEVER, TO REQUIRE MRS. COWHERD TO ADDUCE EVIDENCE ABOUT THE ORIGATION AND PREPARATION OF THE FIRST PETITION, WHICH SHE STATES SHE HAD NO KNOWLEDGE OF, IS PLACING HER IN AN IMPOSSIBLE POSITION.

4. THE APPLICANT UNION HAS MADE CHARGES ALLEGING IMPROPER CONDUCT IN RESPECT OF THE ORIGATION, PREPARATION AND CIRCULATION OF BOTH PETITIONS. IN THE CIRCUMSTANCES, IT IS PRESUMPTUOUS FOR THE BOARD TO REFUSE TO GIVE MRS. COWHERD'S PETITION WEIGHT BEFORE HEARING AND EVALUATING THE EVIDENCE THE APPLICANT WAS PREPARED TO PRODUCE IN SUPPORT OF ITS CHARGES.

5. FOR THESE REASONS, I WOULD HAVE DIRECTED THAT THIS CASE BE RELISTED TO HEAR THE EVIDENCE AND ARGUMENT IN RESPECT OF THE APPLICANT'S CHARGES.

14138-68-R: ST. MARY'S OF THE LAKE HOSPITAL EMPLOYEES' ASSOCIATION (APPLICANT) V. ST. MARY'S OF THE LAKE HOSPITAL (RESPONDENT) V. V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 729 (INTERVENER #1) V. CANADIAN UNION OF GENERAL EMPLOYEES (INTERVENER #2).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: ROBIN B. CUMINE AND E. COLLEY FOR THE APPLICANT, B. W. BINNING, LLOYD A. WOODS AND SISTER MARY HAGAN FOR THE RESPONDENT, ROWLAND G. HILL FOR INTERVENER #1, JEAN JACQUES BLAIS FOR INTERVENER #2.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON: OCTOBER 15, 1968.

1. AT THE HEARING IN THIS MATTER THE RESPONDENT OBJECTED TO INTERVENER #2 PARTICIPATING IN THESE PROCEEDINGS AS A PARTY.
2. INTERVENER #2 IS A TRADE UNION WHICH FILED AN INTERVENTION, FORM 11, IN THIS MATTER. WHILE INTERVENER #2 CLAIMED IN ITS INTERVENTION THAT IT "REPRESENTS EMPLOYEES" IT DID NOT FILE ANY DOCUMENTARY EVIDENCE OF MEMBERSHIP OR ANY DOCUMENT WHICH WOULD EVIDENCE ITS RIGHT TO REPRESENT ANY EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT IN THESE PROCEEDINGS.
3. INTERVENER #2 BASED ITS CLAIM TO PARTICIPATE IN THESE PROCEEDINGS ON THE GROUNDS THAT IN AN EARLIER APPLICATION IT HAD APPLIED TO BE CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED AND FILED DOCUMENTARY EVIDENCE OF MEMBERSHIP IN THE EARLIER APPLICATION FOR EMPLOYEES OF THE RESPONDENT. THE INSTANT APPLICATION WAS MADE ON FEBRUARY 12TH, 1968 AND WAS NOT PROCESSED UNTIL SEPTEMBER 1968 PENDING A DECISION BY THE BOARD WITH RESPECT TO THE EARLIER APPLICATION.
4. HAVING REGARD TO THE ADMISSIONS MADE BY COUNSEL FOR INTERVENER #2, THE BOARD FINDS ON THE EVIDENCE BEFORE IT THAT WHILE THE APPLICANT IN THE EARLIER APPLICATION HAD THE SAME NAME AS INTERVENER #2, THE BOARD DISMISSED THAT APPLICATION ON THE GROUNDS THAT THE APPLICANT HAD FAILED TO SATISFY THE BOARD THAT IT WAS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT. HOWEVER, THE ORGANIZATION WHICH HAD APPLIED TO BE CERTIFIED CAUSED CERTAIN ORGANIZATIONAL CHANGES TO BE MADE WHICH PERMITTED THE BOARD TO RECOGNIZE INTERVENER #2 AS A TRADE UNION WITHIN THE MEANING OF THE ACT IN A SUBSEQUENT APPLICATION.

5. ALTHOUGH THE DOCUMENTARY EVIDENCE OF MEMBERSHIP WHICH HAD BEEN BEFORE THE BOARD IN THE EARLIER APPLICATION WAS APPARENTLY IN THE BOARD'S POSSESSION WHEN IT HEARD THE INSTANT APPLICATION, THERE WAS NOTHING BEFORE THE BOARD FROM WHICH THE BOARD CAN CONCLUDE THAT THE MEMBERSHIP EVIDENCE IN THE EARLIER APPLICATION SHOULD BE ACCEPTED AS EVIDENCE OF REPRESENTATION OF INTERVENER #2 AS RECONSTITUTED. SINCE INTERVENER #2 OBTAINED STATUS AS A TRADE UNION SUBSEQUENT TO THE TIME THAT THE MEMBERSHIP CARDS REFERRED TO WERE SIGNED, SUCH MEMBERSHIP CARDS COULD THEREFORE NOT BE ACCEPTED AS MEMBERSHIP EVIDENCE IN THE NEWLY FORMED TRADE UNION. THE BOARD IS THEREFORE NOT PREPARED TO FIND THAT THE DOCUMENTARY EVIDENCE OF MEMBERSHIP FILED IN THE EARLIER APPLICATION IS EVIDENCE OF REPRESENTATION BY INTERVENER #2 OF ANY OF THE RESPONDENT'S EMPLOYEES IN THIS MATTER.

6. IN ADDITION, INTERVENER #2 STATED THAT IT HAD COMPLAINED UNDER SECTION 65 OF THE ACT THAT AN EMPLOYEE OF THE RESPONDENT HAD BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE ACT. THE FACT THAT INTERVENER #2 MAY HAVE HAD AUTHORITY TO BRING A COMPLAINT UNDER SECTION 65 OF THE ACT, DOES NOT, OF ITSELF, ENTITLE INTERVENER #2 TO REPRESENT THE EMPLOYEE CONCERNED IN ANY SUBSEQUENT PROCEEDING BEFORE THE BOARD IN WHICH THAT EMPLOYEE MAY HAVE AN INTEREST.

7. IT IS QUITE A SIMPLE MATTER FOR A TRADE UNION TO FILE EVIDENCE OF REPRESENTATION ON BEHALF OF EMPLOYEES IN A BARGAINING UNIT IN ORDER TO PARTICIPATE IN AN APPLICATION AS A PARTY. (SEE ESSEX HEALTH ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1967, P. 885.) IF A TRADE UNION DOES NOT FILE EVIDENCE OF REPRESENTATION WHICH EVIDENCE MAY TAKE THE FORM OF A COLLECTIVE AGREEMENT OR CERTIFICATE COVERING EMPLOYEES IN THE BARGAINING UNIT, DOCUMENTARY EVIDENCE OF MEMBERSHIP OR SOME OTHER WRITTEN FORM OF AUTHORIZATION, THEN THE BOARD HAS NO OTHER RECOURSE THAN TO FIND THAT THE TRADE UNION WHICH HAS FAILED TO FILE SUCH EVIDENCE IS A STRANGER TO THE PROCEEDINGS AND IS NOT ENTITLED TO PARTICIPATE AS A PARTY.

8. IN THIS CASE, ALTHOUGH GIVEN AN OPPORTUNITY TO PROVE ITS INTEREST IN THESE PROCEEDINGS, INTERVENER #2 FAILED TO ESTABLISH THAT IT HAD A VALID CLAIM TO REPRESENT ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE HEARING IN THIS MATTER, AND THE BOARD THEREFORE DECLARES INTERVENER #2 TO BE A STRANGER TO THESE PROCEEDINGS AND IS ACCORDINGLY NOT ENTITLED TO PARTICIPATE IN THIS MATTER AS A PARTY. THE INTERVENTION FILED BY INTERVENER #2 IS THEREFORE DISMISSED.

9. INTERVENER #2 ASKED FOR AN ADJOURNMENT IN ORDER THAT IT COULD OBTAIN THE NECESSARY EVIDENCE OF REPRESENTATION TO PERMIT IT TO PARTICIPATE AS A PARTY. THE BOARD DISMISSED THE REQUEST FOR ADJOURNMENT ON THE GROUNDS THAT INTERVENER #2 HAD NO STATUS TO MAKE SUCH A REQUEST SINCE IT WAS NOT ENTITLED TO PARTICIPATE AS A PARTY AT THE TIME THE REQUEST WAS MADE.

10. THE BOARD'S DECISION IN THIS MATTER IS CONSISTENT WITH AN EARLIER DECISION OF THE BOARD IN RE NORTHERN ELECTRIC COMPANY LIMITED CASE, 63 C.L.L.C. ¶15, 484.

11. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

12. THE BOARD FURTHER FINDS THAT ALL LAY EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR OR FOREMAN, CHIEF ENGINEER, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND LOCAL 729 OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

13. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

14. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 17TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

15. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER P. J. O'KEEFFE:

OCTOBER 15, 1968.

WHILE I CONCUR WITH THE DECISION OF THE MAJORITY IN CERTIFYING THE APPLICANT, I WISH TO DISSENT FROM THAT PART OF THE DECISION OF THE MAJORITY WHICH DENIED INTERVENER #2 ENTITLEMENT TO PARTICIPATE IN THIS APPLICATION AS A PARTY. INTERVENER #2 HAD RECENTLY APPLIED FOR CERTIFICATION FOR THIS GROUP OF EMPLOYEES NOW CLAIMED BY THE APPLICANT AND THIS APPLICATION WAS DISMISSED ON TECHNICAL GROUNDS. SUBSEQUENTLY IN AN APPLICATION UNDER SECTION 65 OF THE ACT CONCERNING THE SAME RESPONDENT AS IN THE INSTANT CASE INTERVENER #2 WAS GIVEN STATUS AS A TRADE UNION BY THIS BOARD.

IN THE CIRCUMSTANCES OF THIS CASE AND IN VIEW OF THE BOARD'S COMMON FUND OF KNOWLEDGE OF INTERVENER #2'S INTEREST IN THIS BARGAINING UNIT, I AM CONSTRAINED TO ALLOW INTERVENER #2 TO APPEAR IN THIS CASE AS A PARTY. TO DO OTHERWISE WOULD BE TO RESORT TO EXCESSIVE AND UNWARRANTED LEGALISM.

14677-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) v. FIRESTONE STEEL PRODUCTS OF CANADA LIMITED (RESPONDENT) v. LOCAL 111 OF THE INTERNATIONAL COOPERS UNION OF NORTH AMERICA (INTERVENER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: E.B. JOLLIFFE, Q.C., ROBERT WHITE, AND H. CARL ANDERSON FOR THE APPLICANT; O.W. DIRDIN, Q.C., AND W.P. PAYNE FOR THE RESPONDENT; AND EDWARD RICHMOND, Q.C., AND GEORGE ANDERSON FOR THE INTERVENER.

DECISION OF THE BOARD: OCTOBER 3, 1968.

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2. THIS IS AN APPLICATION FOR CERTIFICATION.

3. THE RESPONDENT RAISED AS A BAR TO THE APPLICATION AN AGREEMENT WHICH IT ALLEGED WAS A COLLECTIVE AGREEMENT MADE BETWEEN IT AND THE INTERVENER ON OCTOBER 31ST, 1967. ITS TERMS WERE TO BECOME EFFECTIVE WHEN THE RESPONDENT PUT TWO MEN ON THE PAYROLL FROM THE EMPLOY OF THE LONDON & PETROLIA BARREL CO. LIMITED, HEREINAFTER CALLED "THE BARREL CO." REFERENCE WAS ALSO MADE BY THE RESPONDENT BY WAY OF OBJECTION TO A MEMORANDUM MADE BETWEEN IT AND TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 141, HEREINAFTER CALLED "THE TEAMSTERS". THIS MEMORANDUM PROVIDES THAT THE RESPONDENT IS TO ASSUME THE TERMS OF AN EXISTING COLLECTIVE AGREEMENT MADE BETWEEN THE TEAMSTERS AND THE BARREL CO. THIS MEMORANDUM WAS NOT SIGNED, HOWEVER, UNTIL JUNE 11TH, 1968. IT PROVIDES THAT THE AGREEMENT REFERRED TO IN THE MEMORANDUM IS TO BECOME EFFECTIVE AT SUCH TIME AS THE RESPONDENT PUTS TWO MEN ON THE PAYROLL FROM THE EMPLOY OF THE BARREL CO.

4. THE APPLICANT TAKES THE POSITION THAT THE FOREGOING AGREEMENTS DO NOT CONSTITUTE COLLECTIVE AGREEMENTS BECAUSE THE RESPONDENT HAD NO PERSONS IN ITS EMPLOY AT THE TIME THE AGREEMENTS WERE MADE. THE APPLICANT ALSO TAKES THE POSITION THAT THE INTERVENER LACKS STATUS BEFORE THE BOARD, ON THE GROUNDS THAT MEMBERSHIP UNDER SECTION 99 OF THE COOPERS' INTERNATIONAL CONSTITUTION IS ONLY OPEN TO AMERICAN CITIZENS, OR TO THOSE DECLARING THEIR INTENTIONS OF BECOMING AMERICAN CITIZENS AS SOON AS POSSIBLE.

5. THE REFERENCES TO THE BARREL CO. IN THE ABOVE AGREEMENTS HAVE THEIR ORIGIN IN THE FOLLOWING CIRCUMSTANCES WHICH WERE ESTABLISHED BY EVIDENCE AT THE HEARING.

6. THE EVIDENCE GIVEN BY W. P. PAYNE, PRESIDENT AND GENERAL MANAGER OF THE RESPONDENT, WHO WAS ALSO AT ALL MATERIAL TIMES PRESIDENT AND GENERAL MANAGER OF THE BARREL CO., IS THAT THE RESPONDENT ENTERED INTO AN AGREEMENT WITH THE BARREL CO. TO PURCHASE OVER HALF OF ALL THE MACHINERY, PART OF THE FURNITURE, AND PART OF THE VEHICLES OWNED BY THE LATTER. THE MACHINES, TOOLS, AND OTHER EQUIPMENT WERE TO BE PAID FOR BY FIRESTONE IN SHARES OF THAT COMPANY. IN ADDITION TO THE FOREGOING, THE AGREEMENT BETWEEN THE TWO COMPANIES PROVIDED THAT THE RESPONDENT WOULD CONTINUE TO EMPLOY ALL EMPLOYEES OF THE BARREL CO. AND WOULD CARRY OUT THE TERMS OF THE COLLECTIVE AGREEMENTS BETWEEN THE COMPANY, THE INTERVENER, AND THE TEAMSTERS. THIS ARRANGEMENT WAS OF COURSE KNOWN TO THE INTERVENER AND THE TEAMSTERS, AS APPEARS OBVIOUS FROM THE PROVISION THAT THE AGREEMENTS WOULD COME INTO EFFECT AS SOON AS TWO MEN WERE PLACED ON THE PAYROLL FROM THE EMPLOYEES OF THE BARREL CO. THE WITNESS STATED THAT THE ARRANGEMENT WAS THAT THE BARREL CO. WOULD GO OUT OF BUSINESS AND FIRESTONE WOULD CARRY ON, AND WAS IN FACT AT THE TIME OF THE HEARING CARRYING ON, THE BUSINESS FORMERLY CONDUCTED BY THE BARREL CO. FOLLOWING THIS TESTIMONY, THE WITNESS SAID THAT THERE HAD BEEN NO SALE. HE WAS NOT QUESTIONED AS TO WHAT HE MEANT BY THAT STATEMENT, AND IT IS DIFFICULT TO UNDERSTAND IN VIEW OF THE PRECEDING TESTIMONY.

7. IN ACCORDANCE WITH THE AGREEMENT A TRANSFER OF MACHINERY AND EQUIPMENT FROM THE PREMISES OF THE BARREL CO. TO THOSE OF THE RESPONDENT WAS CARRIED ON IN PHASES FOR SOME MONTHS PRIOR TO MAY 31ST, 1968. WE FIND THAT THE EMPLOYEES OF THE BARREL CO. CONTINUED AS EMPLOYEES OF THAT COMPANY UNTIL MAY 21ST, 1968. ON JUNE 1ST, 1968, ALL FORMER EMPLOYEES OF THE BARREL CO. WERE PLACED ON THE PAYROLL OF THE RESPONDENT AND BECAME EMPLOYEES OF THE RESPONDENT ON THAT DATE. WE ALSO FIND THAT, PRIOR TO JUNE 1ST, 1968, THE RESPONDENT HAD NO EMPLOYEES. SINCE JUNE 1ST, 1968, THE RESPONDENT HAS CONTINUED TO CARRY ON PRECISELY THE SAME BUSINESS AS WAS FORMERLY CARRIED ON BY THE BARREL CO.

8. THE DETAILS OF THE ABOVE TRANSACTION WERE SET OUT IN THE RESPONDENT'S REPLY, AND ALTHOUGH NO SPECIFIC REFERENCE WAS MADE TO SECTION 47A OF THE LABOUR RELATIONS ACT IN THE REPLY, THE ABOVE-RECITED FACTS NECESSITATE CONSIDERATION OF THAT SECTION. IN FACT, THE MATTER WAS RAISED BY THE APPLICANT, WHO ARGUED THAT THE SECTION IS NOT APPLICABLE IN ALL THE CIRCUMSTANCES. SECTION 47A(1) AND (2) OF THE ACT IS AS FOLLOWS:

"47A(1) IN THIS SECTION,

(A) 'BUSINESS' INCLUDES A PART OR PARTS THEREOF;

- (B) 'SELLS' INCLUDES LEASES, TRANSFERS AND ANY OTHER MANNER OF DISPOSITION, AND 'SOLD' AND 'SALE' HAVING CORRESPONDING MEANINGS.

(2) WHERE AN EMPLOYER WHO IS BOUND OR IS A PARTY TO A COLLECTIVE AGREEMENT WITH A TRADE UNION OR ON BEHALF OF WHOSE EMPLOYEES A TRADE UNION HAS BEEN CERTIFIED AS BARGAINING AGENT OR HAS GIVEN OR IS ENTITLED TO GIVE NOTICE UNDER SECTION 11 OR 40 SELLS HIS BUSINESS, THE TRADE UNION CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF THE PERSON TO WHOM THE BUSINESS WAS SOLD IN THE LIKE BARGAINING UNIT IN THAT BUSINESS, AND THE TRADE UNION IS ENTITLED TO GIVE TO THE PERSON TO WHOM THE BUSINESS WAS SOLD A WRITTEN NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT, AND SUCH NOTICE HAS THE SAME EFFECT AS A NOTICE UNDER SECTION 11."

9. IN THE OPINION OF THE BOARD, THE EVIDENCE CLEARLY INDICATES THAT THE TRANSACTION BETWEEN THE RESPONDENT AND THE BARREL CO. CONSTITUTES A SALE WITHIN THE MEANING OF SECTION 47A OF THE ACT. THAT BEING THE CASE, IT IS MANDATORY, AS A READING OF SUBSECTION 2 INDICATES, THAT CERTAIN CONSEQUENCES MUST FOLLOW WHERE THE PARTICULAR CONDITIONS SET OUT IN THE SECTION ARE FOUND TO PREVAIL.

10. THE EVIDENCE ESTABLISHES THAT, AT THE TIME OF THE COMPLETION OF THE SALE FROM THE BARREL CO. TO THE RESPONDENT, THE BARREL CO. WAS BOUND BY A COLLECTIVE AGREEMENT WITH LOCAL 141 OF THE TEAMSTERS EFFECTIVE FROM OCTOBER 1ST, 1965, TO SEPTEMBER 30TH, 1968. IT WAS ALSO ESTABLISHES THAT THE BARREL CO. HAD BARGAINED WITH THE TEAMSTERS FOR A UNIT OF TRUCKDRIVERS FOR SOME TEN YEARS PRIOR TO JUNE 1ST, 1968.

11. THE BARREL CO. WAS, AT THE TIME OF THE SALE, ALSO PARTY TO A COLLECTIVE AGREEMENT WITH THE INTERVENER DATED OCTOBER 31ST, 1967, TO BE EFFECTIVE UNTIL OCTOBER 15TH, 1970. THE INTERVENER HAD BEEN FOUND TO BE A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT AND HAD BEEN CERTIFIED BY THE BOARD ON THE 7TH OF JANUARY, 1952, AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT LONDON, WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.

12. IT FOLLOWS, IN ACCORDANCE WITH THE PROVISIONS OF SECTION 47A(2), THAT EACH OF THE FOREGOING TRADE UNIONS CONTINUES, UNTIL THE BOARD OTHERWISE DIRECTS, TO BE THE BARGAINING AGENT FOR THE EMPLOYEES OF FIRESTONE STEEL PRODUCTS OF CANADA LIMITED IN LIKE BARGAINING UNITS IN ITS BUSINESS. EACH TRADE UNION WOULD ACCORDINGLY BE ENTITLED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN WITH FIRESTONE STEEL PRODUCTS LIMITED, WHICH NOTICE HAS THE SAME EFFECT

AS A NOTICE UNDER SECTION 11. THE ENTITLEMENT TO GIVE NOTICE CANNOT ARISE BEFORE THE DATE OF THE SALE AND, AS WAS STATED IN THE TRENTON RIVERSIDE DAIRY PRODUCTS LIMITED CASE, C.L.S. 76-1005 AT 76-1010, "THE UNION CLAIMING TO HOLD BARGAINING RIGHTS UNDER THE SUCCESSOR PROVISIONS OF SECTION 47A(2) MUST, OF COURSE, BE AFFORDED A REASONABLE PERIOD OF TIME DURING WHICH IT WILL HAVE THE OPPORTUNITY TO GIVE NOTICE TO AND TO BARGAIN WITH THE SUCCESSOR EMPLOYER." THE APPLICATION IN THE PRESENT CASE WAS MADE ON THE THIRD DAY FOLLOWING THE SALE AND, IN OUR OPINION, IS CLEARLY PREMATURE AND UNTIMELY, AS NOT ALLOWING THE UNIONS HOLDING BARGAINING RIGHTS REASONABLE TIME TO SERVE NOTICE AND TO BARGAIN HAD THEY SO DESIRED.

13. IN THE PRESENT CASE NO FORMAL NOTICE OF DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT WAS GIVEN AT ANY TIME BY THE INTERVENER OR THE TEAMSTERS TO THE RESPONDENT. THE PURPOSE OF GIVING SUCH NOTICE IS, HOWEVER, TO ADVISE THE EMPLOYER OF A DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. IN THE PRESENT CIRCUMSTANCES IT IS CLEAR THAT THE RESPONDENT AND THE TWO "CONTINUING" BARGAINING AGENTS MIGHT PROPERLY CONSIDER SUCH NOTICE TO BE SUPERFLUOUS, IN VIEW OF THE FACT THAT THEY HAD APPARENTLY FULFILLED THE VERY PURPOSE OF THE NOTICE AND HAD COMPLETED, IN THE CASE OF THE INTERVENER, AND WERE ON THE VERGE OF COMPLETING IN THE CASE OF THE TEAMSTERS, A FORMAL COLLECTIVE AGREEMENT BASED ON THE SIGNED MEMORANDUM.

14. IT IS A FACT THAT THERE WERE NO EMPLOYEES OF THE RESPONDENT AT THE TIME THE AGREEMENT WITH THE INTERVENER WAS SIGNED. IT SHOULD BE RECOLLECTED, HOWEVER, THAT THE TERMS OF THE SALE, AS THE PARTIES WERE AWARE, PROVIDED FOR THE EMPLOYMENT BY THE RESPONDENT OF THE EMPLOYEES OF THE BARREL CO. REPRESENTED BY THE INTERVENER. THERE WERE, OF COURSE, EMPLOYEES OF THE RESPONDENT AT THE TIME THE MEMORANDUM WITH THE TEAMSTERS WAS SIGNED ON JUNE 11TH, 1968. FURTHERMORE, THE INTERVENER, HAVING RAISED THE AGREEMENT IN THESE PROCEEDINGS, MUST BE TAKEN TO HAVE RE-AFFIRMED AND RATIFIED IT ON BEHALF OF THE EMPLOYEES OF THE RESPONDENT FOR WHOM IT HAS BEEN THE CONTINUING BARGAINING AGENT THROUGHOUT. SINCE BOTH UNIONS WERE BARGAINING AGENTS BY VIRTUE OF THE PROVISIONS OF SECTION 47A AND NOT BY REASON OF ANY AGREEMENT MADE WITH THE RESPONDENT, THEY WERE ENTITLED TO AFFIRM AND RE-AFFIRM THE AGREEMENTS ON BEHALF OF THE EMPLOYEES OF THE RESPONDENTS IN THE RESPECTIVE BARGAINING UNITS. SUBJECT TO THE QUESTION OF STATUS OF THE INTERVENER, THESE AGREEMENTS CONSTITUTE COLLECTIVE AGREEMENTS, AND AS SUCH FORM EFFECTIVE BARS TO THE PRESENT APPLICATION.

15. THERE REMAINS THE QUESTION RAISED BY THE APPLICANT WITH RESPECT TO THE STATUS OF THE INTERVENER IN THESE PROCEEDINGS.

THE EVIDENCE PRESENTED AT THIS HEARING ESTABLISHES THAT IN PRACTICE THE COOPERS INTERNATIONAL UNION GRANTS FULL MEMBERSHIP RIGHTS TO CANADIAN MEMBERS OF LOCAL 111, WHICH IS THE ONLY CANADIAN UNION GRANTED A CHARTER BY THE INTERNATIONAL. THE LOCAL HAS SENT DELEGATES TO AT LEAST THE LAST TWO INTERNATIONAL CONVENTIONS, WHERE THEY HAVE BEEN ACCORDED FULL AND EQUAL STATUS WITH OTHER MEMBERS OF THE INTERNATIONAL. IT IS APPARENT, THEREFORE, THAT NOTWITHSTANDING THE PROVISIONS OF SECTION 99 OF THE CONSTITUTION THE INTERVENER HAS NOT DISCRIMINATED ON THE BASIS OF CITIZENSHIP IN ADMITTING PERSONS TO MEMBERSHIP. SECTION 42 OF THE CONSTITUTION PROVIDES THAT LOCAL UNIONS OUTSIDE THE CONTINENTAL LIMITS OF THE UNITED STATES PAY PER CAPITA TAX "IN THEIR RESPECTIVE CURRENCIES". IT WAS ARGUED THAT THIS PROVISION, ALTHOUGH BY NO MEANS CONCLUSIVE, WAS INDICATIVE OF AN APPROACH TO MEMBERSHIP QUALIFICATION MORE CONSISTENT WITH THE PRACTICES OUTLINED ABOVE THAN WITH A RESTRICTIVE APPLICATION OF SECTION 99. MOREOVER, IT IS QUITE CLEAR THAT, SINCE ITS CERTIFICATION IN 1952, THE INTERVENER HAS REPRESENTED ALL THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT DESCRIBED IN THE CERTIFICATE ISSUED BY THE BOARD WITH CERTAIN PROPER EXCLUSIONS. IT SHOULD BE OBSERVED THAT THIS IS NOT AN INITIAL APPLICATION FOR CERTIFICATION BY THE INTERVENER, SO THAT THE QUESTION OF DETERMINING MEMBERSHIP IN THAT CONTEXT DOES NOT PRESENT ITSELF TO THE BOARD IN THIS INSTANCE. THAT ASPECT OF THE MATTER WAS SETTLED IN THE CERTIFICATE OF THE INTERVENER PREVIOUSLY REFERRED TO, AND WHICH WAS MADE ON THE EVIDENCE BEFORE THE BOARD AT THAT TIME.

16. FURTHERMORE, IN OUR OPINION THE QUESTION OF THE STATUS OF THE INTERVENER AS A TRADE UNION WAS ALSO DETERMINED BY THE BOARD ON THE ORIGINAL APPLICATION ON THE EVIDENCE PRESENTED AT THAT TIME AND IS NOT NOW OPEN TO REVIEW IN THE PRESENT CIRCUMSTANCES.

17. FOR THE REASONS STATED, THE BOARD FINDS THE APPLICATION IS UNTIMELY, AND THE SAME IS HEREBY DISMISSED.

14678-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) v.
THE BOARD OF EDUCATION FOR THE CITY OF PETERBOROUGH (RESPONDENT) v.
GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: M. J. SOMERVILLE, D. LINDSAY FOR THE
APPLICANT, W. B. GORDON, Q.C., FOR THE RESPONDENT, AND E. L. BUTCHER
FOR THE GROUP OF EMPLOYEES.

DECISION OF G. W. REED, Q.C., CHAIRMAN AND BOARD MEMBER H. F. IRWIN:

OCTOBER 10, 1968.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THIS CASE PRESENTS A NUMBER OF UNUSUAL FACTORS WHICH MUST BE TAKEN INTO CONSIDERATION BEFORE ARRIVING AT ANY FINAL DECISION. THE REPLY OF THE RESPONDENT ALLEGES THAT:

"CARETAKERS AND MAINTENANCE ASSOCIATION BOARD OF EDUCATION IS THE BARGAINING AGENT FOR THIS UNIT AND HAS BEEN SINCE THE YEAR 1956. CURRENT COLLECTIVE AGREEMENT IS IN EFFECT AND TERMINATES 31ST OF DECEMBER 1968. COPIES OF EXCHANGE OF CORRESPONDENCE, RESOLUTIONS OF THE BOARD OF EDUCATION RELEVANT TO THE COLLECTIVE AGREEMENT, ARE HERETO ATTACHED."

3. THE RESPONDENT WAS NOT REPRESENTED AT THE FIRST HEARING IN THIS MATTER IN TORONTO AND WE WERE SUBSEQUENTLY ADVISED AT THE SECOND HEARING IN PETERBOROUGH BY RESPONDENT'S COUNSEL THAT THE RESPONDENT DIRECTED THAT NO ONE SHOULD APPEAR ON ITS BEHALF AT THE TORONTO HEARING. NOR DID ANYONE APPEAR ON BEHALF OF THE ASSOCIATION REFERRED TO IN THE REPLY ALTHOUGH DULY SERVED WITH NOTICE. ALTHOUGH THE SECRETARY WAS PRESENT AT THE HEARING HE MADE IT CLEAR TO THE BOARD THAT HE WAS NOT REPRESENTING THE ASSOCIATION BUT, RATHER, A GROUP OF EMPLOYEES WHO WERE OBJECTING TO THE APPLICATION. AS WILL APPEAR LATER, THE PRESIDENT OF THE ASSOCIATION WAS ALSO PRESENT BUT NOT IN HIS OFFICIAL CAPACITY.

4. AS A RESULT NO EVIDENCE WAS LED TO PROVE OR IDENTIFY ANY OF THE DOCUMENTS SUBMITTED BY THE RESPONDENT AND REFERRED TO IN ITS REPLY. ACCORDINGLY, THE BOARD INDICATED TO THE APPLICANT THAT THERE WAS NO EVIDENCE BEFORE THE BOARD OF THE ALLEGED COLLECTIVE AGREEMENT AND THE APPLICANT THUS TOOK NO FURTHER STEPS IN THE CASE IN SUPPORT OF ITS POSITION THAT THE DOCUMENTS IN QUESTION DID NOT CONSTITUTE A COLLECTIVE AGREEMENT UNDER THE LABOUR RELATIONS ACT.

5. DURING ARGUMENT AT THE SECOND HEARING IN PETERBOROUGH, COUNSEL FOR THE RESPONDENT SOUGHT TO REFER TO THE DOCUMENTS. THE BOARD RULED THAT HE WAS NOT ENTITLED TO DO THIS BECAUSE THEY WERE NOT IN EVIDENCE BEFORE THE BOARD. THIS RULING WAS MADE IN THE LIGHT OF THE BOARD'S DECISION IN BEAMER AND LATHROP LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL, 1968, P. 122. WE DO NOT CONSIDER IT ADVISABLE TO RECONSIDER THIS RULING ALTHOUGH REQUESTED TO DO SO BY THE RESPONDENT FOLLOWING THE HEARING IN PETERBOROUGH.

6. THE APPLICANT, HOWEVER, ELECTED TO CALL EVIDENCE DEALING WITH THE STATUS OF THE ASSOCIATION. WHILE ORIGINALLY FORMED AS A SOCIAL CLUB, A NEW CONSTITUTION WAS ADOPTED "SOMEWHERE AROUND" 1956. THAT CONSTITUTION WAS PROPERLY IDENTIFIED BY ONE OF THE APPLICANT'S WITNESSES WHO WAS A FORMER OFFICER OF THE ASSOCIATION. ALTHOUGH WE HAVE NO EVIDENCE RELATING TO HOW THIS CONSTITUTION WAS ADOPTED AND WHILE THE PRESIDENT AND A FORMER TREASURER TESTIFIED THAT IN THEIR OPINION THE ASSOCIATION WAS NOT A TRADE UNION, JUDGED BY THE CONSTITUTION ALONE, IT WOULD APPEAR THAT THE ASSOCIATION QUALIFIES AS A TRADE UNION UNDER THE LABOUR RELATIONS ACT.

7. FURTHERMORE, TESTIMONY FROM THE APPLICANT'S WITNESSES ESTABLISHED THAT A BARGAINING RELATIONSHIP HAS EXISTED BETWEEN THE ASSOCIATION AND THE RESPONDENT FOR TWELVE YEARS AND THAT THE RESPONDENT RECOGNIZED THE ASSOCIATION AS A BARGAINING AGENT. IT WOULD SEEM THAT THE RESPONDENT INITIATED THE RELATIONSHIP BY APPROACHING THE ASSOCIATION AND ASKING IF IT COULD BE USED FOR NEGOTIATIONS AND THE ASSOCIATION AGREED. THERE IS NO EVIDENCE TO SUGGEST THAT THE RESPONDENT HAD ANYTHING TO DO WITH THE FORMATION OF THE ASSOCIATION. THE ASSOCIATION HAS A NEGOTIATING COMMITTEE AND EVIDENCE WAS GIVEN AS TO HOW NEGOTIATIONS WERE CARRIED ON. DURING THIS TESTIMONY, REFERENCE WAS MADE TO "THE PRESENT AGREEMENT AND THE ONE BEFORE IT" BETWEEN THE RESPONDENT AND THE ASSOCIATION. MEETINGS OF THE ASSOCIATION ARE HELD IN THE SCHOOLS WITH THE PERMISSION OF THE RESPONDENT WHICH ALSO PERMITS MEETINGS OF OTHER GROUPS OR PARTIES TO BE HELD ON SCHOOL PREMISES.

8. AS NOTED EARLIER A GROUP OF EMPLOYEES FILED OBJECTIONS TO THE APPLICATION AND THEY WERE REPRESENTED BY MR. E. L. BUTCHER, THE SECRETARY OF THE ASSOCIATION. THE NUMBER OF PERSONS SIGNING THE OBJECTIONS WHO ALSO SIGNED APPLICATIONS FOR MEMBERSHIP IN THE APPLICANT ARE SUCH THAT IF WEIGHT WERE TO BE ACCORDED THESE OBJECTIONS, THE BOARD WOULD NORMALLY ORDER A REPRESENTATION VOTE INSTEAD OF GRANTING AN OUTRIGHT CERTIFICATION. ACCORDINGLY, THE BOARD HEARD EVIDENCE RESPECTING THE ORIGINATION, PREPARATION AND CIRCULATION OF THE DOCUMENTS IN QUESTION. THE EVIDENCE ESTABLISHED AMONG OTHER THINGS THAT THE DOCUMENTS WERE PREPARED BY BUTCHER, APPROVED BY HIS LAWYER AND WERE THEN TYPED AND MINEOGRAPHED AT BUTCHER'S REQUEST BY THE SECRETARY OF THE PRINCIPAL OF THE SCHOOL WHERE BUTCHER WORKS. LATER SHE MADE PHOTO-COPIES OF THESE DOCUMENTS FOR BUTCHER WHO IN TURN SUBSEQUENTLY TENDERED PAYMENT TO THE PRINCIPAL WHO WOULD NOT ACCEPT ANY MONEY. THE RESPONDENT'S DIRECTOR OF EDUCATION TESTIFIED THAT IT WAS THE RESPONDENT'S POLICY TO MAKE SECRETARIAL SERVICES AVAILABLE FREE OF CHARGE (WITHIN REASON) TO GROUPS SUCH AS THE HOME AND SCHOOL ASSOCIATION, STUDENTS, THE TEACHERS' FEDERATION AND THE CARE-TAKERS' ASSOCIATION. WHILE MR. BUTCHER WAS NOT IN FACT ACTING ON

BEHALF OF THE ASSOCIATION, HE HAD ON PREVIOUS OCCASIONS SOUGHT AND OBTAINED SECRETARIAL HELP FROM THE SECRETARY AND IT SEEMS REASONABLE TO INFER THAT THE SECRETARY BELIEVED HE WAS ACTING IN HIS OFFICIAL CAPACITY ON THIS OCCASION.

9. IT IS CLEAR THAT MOST OF THE SIGNATURES ON THE STATEMENT OF OBJECTIONS WERE OBTAINED ON THE RESPONDENT'S PREMISES DURING WORKING HOURS BY MR. BUTCHER WHO TESTIFIED HOWEVER THAT HE HIMSELF WAS ON HIS BREAK PERIOD WHEN HE OBTAINED THE SIGNATURES. LATER IN HIS TESTIMONY HE STATED THAT SOME SIGNATURES WERE OBTAINED AT A TIME DURING WHICH HE WOULD NORMALLY BE WORKING. WHILE THERE IS NO EVIDENCE TO SUGGEST THAT MANAGEMENT PERSONS WERE PRESENT WHEN THE SIGNATURES WERE OBTAINED OR, FOR THAT MATTER, WHEN THE DOCUMENTS WERE BEING TYPED OR DUPLICATED, MANAGEMENT WAS AWARE OF WHAT WAS GOING ON AND THE EMPLOYEES KNEW THAT MANAGEMENT HAD THIS KNOWLEDGE.

10. MR. BUTCHER TESTIFIED THAT HE WAS ASKED BY EMPLOYEES TO INQUIRE FROM THE SECRETARY OF THE RESPONDENT WHETHER ANY REPERCUSSIONS OR HARM WOULD BEFALL THEM IF THEY SIGNED THE STATEMENTS OF OBJECTION ON SCHOOL PROPERTY OR DURING WORKING HOURS. BUTCHER CALLED ON THE SECRETARY WHO INFORMED HIM THAT DUE TO THE FACT THAT THE ASSOCIATION WAS NOT TRYING TO ORGANIZE NEW PERSONS HE SAW NO HARM IN SIGNING THE PAPERS AT ANY TIME. THIS WAS CONFIRMED BY OTHER MANAGEMENT PERSONNEL AND THE INFORMATION WAS PASSED ALONG TO THE EMPLOYEES.

11. AFTER THE SIGNATURES OF THE OBJECTORS HAD BEEN OBTAINED BUTCHER WAS INFORMED BY EMPLOYEES THAT THE DOCUMENTS WERE NOT IN THE PROPER FORM SO HE ASKED THE PRESIDENT OF THE ASSOCIATION TO CALL A MEETING. THE PRESIDENT ASSENTED AND BUTCHER ARRANGED WITH THE RESPONDENT TO USE ONE OF THE SCHOOL CAFETERIAS. THE RESPONDENT WAS NOT AWARE OF THE PURPOSE OF THE MEETING. NO RENT WAS PAID BY THE ASSOCIATION TO THE RESPONDENT WHICH, AS WAS NOTED EARLIER, DOES NOT CHARGE ANY GROUP FOR THE USE OF SCHOOL PROPERTY. AT THE MEETING BUTCHER PROPOSED A MOTION WHICH WAS SECONDED TO THE EFFECT THAT ANYONE AT THE MEETING WHO WISHED TO SIGN NEW STATEMENTS OF OBJECTION COULD DO SO FOLLOWING THE MEETING. THE PRESIDENT REFUSED TO ALLOW THE MOTION TO BE PASSED. CONSEQUENTLY, MR. BUTCHER FILED WITH THE BOARD THE FIRST SERIES OF DOCUMENTS WHICH HE HAD PREPARED AND CIRCULATED.

12. IT WAS SUBMITTED BY COUNSEL FOR THE APPLICANT THAT THE ACTIONS OF MANAGEMENT IN RELATION TO THE STATEMENTS OF OBJECTIONS FILED WERE SUCH AS TO MAKE IT APPARENT TO THE EMPLOYEES THAT THE RESPONDENT WAS IN FAVOUR OF THEM SIGNING THE DOCUMENTS AND THAT IN THESE CIRCUMSTANCES THE DOCUMENTS COULD NOT BE SAID TO REPRESENT THE TRUE AND VOLUNTARY WISHES OF THE EMPLOYEES WHO DID IN FACT SIGN THEM. WITHOUT EXPRESSING ANY FINAL OPINION ON THIS

SUBMISSION CERTAIN FACTS SHOULD NOT BE OVERLOOKED. IN THE FIRST PLACE THE IDEA OF OBJECTING TO THE APPLICATION ORIGINATED WITH THE EMPLOYEES THEMSELVES. THERE IS NO SUGGESTION THAT MANAGEMENT HAD ANY HAND IN THIS DECISION. ON THE CONTRARY IT WAS APPARENTLY MADE BECAUSE OF DISSATISFACTION WITH THE ATTITUDE OF THE ASSOCIATION AND ITS EXECUTIVE. SECONDLY, THE ASSISTANCE WITH RESPECT TO THE TYPING, MEETING ROOMS ETC. WAS NOT SOMETHING OUT OF THE ORDINARY BUT WAS IN ACCORDANCE WITH THE GENERAL POLICY OF THE RESPONDENT WITH RESPECT TO GROUPS AND ORGANIZATIONS ASSOCIATED WITH THE RESPONDENT'S SCHOOLS. THIRDLY, THE PERSON ACTIVELY ASSOCIATED WITH THE OBJECTORS WAS THE SECRETARY OF THE ASSOCIATION WHICH HAD HAD A LONG RELATIONSHIP WITH THE RESPONDENT. WHILE HE WAS NOT IN FACT ACTING IN THIS CAPACITY THERE IS NOTHING TO SUGGEST THAT THE RESPONDENT WAS AWARE OF THIS. FOURTHLY, WHILE IN THE CIRCUMSTANCES IT WAS AT THE VERY LEAST INDISCREET ON THE PART OF THE RESPONDENT'S OFFICERS TO INFORM BUTCHER THAT THERE WAS NOTHING WRONG IN HAVING THE STATEMENTS OF OBJECTION SIGNED ON SCHOOL PREMISES DURING WORKING HOURS, THIS DECISION MUST BE VIEWED BOTH IN THE LIGHT OF THE RELATIONSHIP WHICH EXISTED BETWEEN THE ASSOCIATION AND THE RESPONDENT AND MORE IMPORTANTLY, HAVING REGARD TO THE FACT THAT THE RESPONDENT DID NOT INITIATE THE ACTION. IT WAS THE EMPLOYEES WHO CAME TO THE RESPONDENT WITH THE QUESTION. LASTLY, THERE CAN BE NO QUESTION THAT THE RESPONDENT'S ACTIONS, HOWEVER INDISCREET, WERE NOT ACTIVATED BY A DESIRE TO FAVOUR ONE SIDE OR THE OTHER. THEY WERE ATTEMPTING TO ADOPT A HANDS OFF POLICY WITH RESPECT TO THE APPLICATION AND THIS WAS THEIR STATED REASON FOR NOT APPEARING AT THE FIRST HEARING. THIS IS ALSO CLEAR FROM THEIR REACTION TO RUMOURS (AND THEY WERE NO MORE THAN THAT) TO THE EFFECT THAT MR. BUTCHER WAS USING INTIMIDATION OR COERCION TO OBTAIN SIGNATURES. THE DIRECTOR OF EDUCATION CALLED IN BUTCHER WHO DENIED THE CHARGES. THE DIRECTOR POINTED OUT TO HIM THAT IF THEY HAD IN FACT OCCURRED (AND HE WAS NOT SAYING THEY HAD), IT WOULD BE MOST UNWISE TO CONTINUE SUCH CONDUCT.

13. IN SUM, EVEN IF THE ACTIONS OF THE RESPONDENT CAN BE SAID TO HAVE INFLUENCED THE EMPLOYEES IN THEIR DECISION TO SIGN STATEMENTS OF OBJECTION, AND WE MAKE NO FINAL DECISION ON THIS POINT, WE ARE SATISFIED THAT IF THE CIRCUMSTANCES OF THIS CASE OTHERWISE WARRANT THE HOLDING OF A REPRESENTATION VOTE THE CONDUCT OF THE RESPONDENT HAS NOT BEEN SUCH AS TO RENDER IT UNLIKELY THAT THE TRUE WISHES OF THE EMPLOYEES WOULD NOT BE DISCLOSED ON SUCH A VOTE WITHIN THE MEANING OF SECTION 7(5) OF THE LABOUR RELATIONS ACT.

14. UNDER THE PROVISIONS OF SECTION 7(2) OF THE ACT THE BOARD IS ENTITLED TO ORDER A REPRESENTATION VOTE EVEN IF THE APPLICANT HAS AS MEMBERS MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT, AND IT DOES SO IN THIS CASE. IN OUR VIEW, THE EXISTENCE OF THE ASSOCIATION WHICH APPEARS TO BE A TRADE UNION, THE BARGAINING RELATIONSHIP WHICH HAS EXISTED FOR AN EXTENDED PERIOD OF TIME BETWEEN THE ASSOCIATION AND THE RESPONDENT, REFERENCES IN THE

EVIDENCE TO "THE PRESENT AGREEMENT AND THE ONE BEFORE IT", ALTHOUGH NO AGREEMENT WAS IN FACT PROVED, TOGETHER WITH ALL THE OTHER CIRCUMSTANCES OF THE CASE, WARRANT THE ORDERING OF A REPRESENTATION VOTE.

15. THE BOARD FURTHER FINDS THAT ALL CARETAKERS AND MAINTENANCE STAFF IN THE EMPLOY OF THE RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT L. G. KELSEY, R. CRESSMAN, C. BUTCHER, R. CURTIS AND F. A. GEARY ARE SUPERVISORS AND ARE NOT INCLUDED IN THE BARGAINING UNIT.

16. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 12TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

17. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

18. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

19. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER O. HODGES:

OCTOBER 10, 1968.

WHILE I CONCUR WITH THE DECISION TO ORDER A REPRESENTATION VOTE, THE NATURE OF THE EVIDENCE IN THIS CASE REQUIRES ME TO STATE THAT IN A SLIGHTLY DIFFERENT CASE I WOULD NOT NECESSARILY BE BOUND TO COME TO THE SAME CONCLUSION.

14729-68-R: LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, (A.F.L., C.I.O., C.L.C.) (APPLICANT) V. BELL & HOWELL CANADA LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: H. L. MORPHY, M. FISHER AND G. PETTA FOR THE APPLICANT, B. W. BINNING, J. W. J. UNDERELL AND R. I. FINKLEMAN FOR THE RESPONDENT, A. H. HERMAN, R. STOCKWELL AND R. HANNEMAN FOR THE OBJECTORS.

DECISION OF J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFE: OCTOBER 8, 1968.

. . .

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY PER CENT BUT LESS THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JUNE 21ST, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

4. THERE WAS FILED WITH THE BOARD THREE STATEMENTS OF DESIRE BEARING THE SIGNATURES OF PERSONS PURPORTING TO BE EMPLOYEES OF THE RESPONDENT. SINCE ON THE BASIS OF THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IT HAS ONLY ESTABLISHED ITS ENTITLEMENT TO THE TAKING OF A REPRESENTATION VOTE, THE STATEMENTS OF DESIRE CAN IN NO WAY AFFECT THE POSITION OF THE APPLICANT. ACCORDINGLY, IT WAS NOT NECESSARY FOR THE BOARD TO INQUIRE INTO THE ORIGATION, PREPARATION AND CIRCULATION OF THE STATEMENTS.

5. COUNSEL FOR THE APPLICANT SUBMITS, HOWEVER, THAT THE CONDUCT OF THE RESPONDENT DURING THE APPLICANT'S ORGANIZING CAMPAIGN WAS OF SUCH A NATURE THAT A REPRESENTATION VOTE WOULD NOT BE LIKELY TO DISCLOSE THE TRUE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT. COUNSEL ACCORDINGLY REQUESTS THAT THE BOARD EXERCISE THE DISCRETION VESTED IN IT BY SECTION 7(5) OF THE ACT AND CERTIFY THE APPLICANT AS BARGAINING AGENT WITHOUT THE TAKING OF A REPRESENTATION VOTE.

6. THE EVIDENCE BEFORE THE BOARD RELATING TO THE CONDUCT OF THE RESPONDENT DURING THE APPLICANT'S ORGANIZING CAMPAIGN AND IMMEDIATELY AFTER THE APPLICATION WAS MADE IS SET OUT BELOW. JOHN UNDERELL, THE PRESIDENT OF THE RESPONDENT'S OPERATIONS IN TORONTO, BY MEANS OF A PUBLIC ADDRESS SYSTEM, CALLED A MEETING IN THE CAFETERIA OF ALL OF THE COMPANY'S EMPLOYEES AT NOON ON MAY 2ND, 1966. THERE IS SOME CONFLICT BETWEEN THE EVIDENCE OF WITNESSES CALLED BY THE APPLICANT AND THOSE CALLED BY THE RESPONDENT AS TO WHETHER THE MEETING TOOK PLACE DURING THE EMPLOYEES' REGULAR LUNCH BREAK FROM 12:00 NOON TO 12:30 P.M. OR WHETHER THE MEETING STARTED SOME TEN TO FIFTEEN MINUTES EARLIER DURING THE EMPLOYEES' WORKING HOURS. IT APPEARS THAT THAT MEETING LASTED FROM FIFTEEN TO TWENTY MINUTES. OTHER MEMBERS OF MANAGEMENT WERE IN ATTENDANCE BESIDES UNDERELL. NEAR THE COMMENCEMENT OF THE MEETING, UNDERELL TOLD THE EMPLOYEES THAT ANYONE WHO DID NOT WANT TO LISTEN TO HIM COULD LEAVE. HE THEN TURNED HIS BACK FOR A SHORT PERIOD OF TIME. ACCORDING TO THE EVIDENCE, NONE OF THE OTHER MEMBERS OF MANAGEMENT IN ATTENDANCE TURNED THEIR BACKS. NONE OF THE EMPLOYEES LEFT.

7. UNDERELL TESTIFIED THAT AT THE MEETING OF MAY 2ND, 1968, HE READ THE FOLLOWING SPEECH TO THE EMPLOYEES PRESENT.

I HAVE CALLED YOU TOGETHER THIS MORNING BECAUSE THERE IS SOMETHING THAT NEEDS TO BE SAID BETWEEN US.

THOSE OF YOU WHO HAVE BEEN WITH US FOR A YEAR OR SO, WILL KNOW THIS IS A PRACTICE I HAVE FOLLOWED OVER THE YEARS. I DO THIS TO MAKE SURE THAT WHEN THERE IS SOMETHING IMPORTANT THAT EFFECTS ANY OF US, I CALL SUCH A GATHERING TO BRING THINGS OUT IN THE OPEN AND NOT LET RUMOUR AND GOSSIP SPREAD INFORMATION TO YOU THAT IS IN ALMOST EVERY CASE, INACCURATE AND FALSE.

I AM TOLD A UNION IS TRYING TO ORGANIZE US. I WANT TO BE CLEAR ABOUT ONE THING. NO ONE HAS TO STAY TO HEAR WHAT I HAVE TO SAY. IT IS OUTSIDE OF WORKING HOURS AND ANYONE WHO WANTS TO STAY AND LISTEN, THEY CAN, JUST AS ANYONE WHO WISHES TO LEAVE MAY DO SO. THERE IS NO INTENTION ON MY PART TO CONSIDER ANYONE WHO LEAVES SHALL SUFFER IN ANY SHAPE OR FORM BECAUSE THEY LEAVE.

THE COMPANY WANTS TO MAKE IT VERY CLEAR THAT YOU KNOW YOU HAVE THE RIGHT TO ORGANIZE AND WE WILL DO NOTHING TO INTERFERE WITH THAT RIGHT.

I THINK YOU SHOULD KNOW HOWEVER THE COMPANY'S POINT OF VIEW.

1. THE OBJECTIVE OF THIS COMPANY IS TO MAKE A QUALITY PRODUCT AT A REASONABLE PRICE THAT THE CUSTOMER WILL ACCEPT. THE VERY EXISTENCE OF THIS BUSINESS DEPENDS ON THE CUSTOMER ACCEPTANCE OF THE MERCHANDISE THAT WE PRODUCE. IF THE CUSTOMER DOESN'T BUY FOR ANY REASON, EITHER OUR QUALITY IS BAD OR THE PRICE BEING TOO HIGH OR THE GENERAL ECONOMY BEING SUCH THAT THE PRODUCT CANNOT BE AFFORDED THEN BELL & HOWELL WILL BE IN ECONOMIC TROUBLE AND WILL NOT BE ABLE TO CONTINUE IN BUSINESS.
2. IF THIS COMPANY IS IN ECONOMIC TROUBLE BECAUSE OF HIGH PRICES OR UNPROFITABLE OPERATION, NO FORCE ON THE FACE OF THE EARTH WILL BE ABLE TO GUARANTEE THAT WE WILL CONTINUE IN BUSINESS. WE ARE A CANADIAN COMPANY, I CAN TELL YOU HONESTLY AND FORTHRIGHTLY THAT THE ONLY WAY WE CAN SURVIVE IS TO BE PROFITABLE. SIMPLE ECONOMICS WILL NOT TOLERATE AN UNPROFITABLE OPERATION, NO MATTER WHAT ANYONE HAS TOLD YOU. THE ONLY WAY WE CAN GUARANTEE THAT THIS COMPANY WILL CONTINUE TO OPERATE SUCCESSFULLY IS TO MAKE A QUALITY PRODUCT AT A PRICE THAT THE CONSUMER WILL ACCEPT. WE ARE NOW DOING THIS. HOW DO WE DO IT? WE DO IT BECAUSE OUR EMPLOYEES GIVE US A FULL DAY'S WORK - A FAIR DAY'S WORK, THEY GIVE US INDUSTRY - THEY GIVE US PERSPIRATION - THEY GIVE US INTEREST - THEY GIVE US THE BEST THINKING THAT THEY POSSIBLY CAN GIVE US TO PUT INTO THE PRODUCTS THAT ARE MADE WITH THEIR HANDS. WHERE DO THEY DO THIS - THEY DO THIS IN A FACILITY THAT WAS PAID FOR BY THE MANAGEMENT OF THIS COMPANY - THEY DO IT WITH THE PLANS THAT WERE PROVIDED BY THE MANAGEMENT OF THIS COMPANY - THEY DO IT WITH THE EQUIPMENT AND MACHINERY THAT WAS BOUGHT BY THE MANAGEMENT OF BELL & HOWELL.
3. NOW, WHAT ARE THE OBJECTIVES OF THE OUTSIDE ORGANIZATION THAT IS TRYING TO GAIN A FOOTHOLD IN THIS COMPANY? THEIR OBJECTIVE IS TO TAKE MONEY OUT OF A SITUATION IN WHICH THEY CONTRIBUTE NOTHING. THEY DON'T CONTRIBUTE THE BUILDING, THE MACHINERY, THE EQUIPMENT, THEY DON'T CONTRIBUTE PERSPIRATION, INDUSTRY, QUALITY CONSCIOUSNESS, AND ALL THE REST. THEY DON'T CONTRIBUTE A DAMN THING BUT THEY WANT A PIECE OF YOUR PAY CHEQUE SO THAT THEY CAN SAY THEY REPRESENT YOU.

4. I WANT TO TELL YOU AS THE HEAD OF THIS COMPANY THAT NOBODY WILL EVER REPRESENT YOU BETTER THAN YOURSELF. I WANT TO TELL YOU AS THE HEAD OF THIS COMPANY THAT EVERY SINGLE EMPLOYEE HERE IS MORE IMPORTANT TO ME AND TO BELL & HOWELL THAN ANY BRICK BUILDING OR ANY PIECE OF EQUIPMENT OR MACHINERY. I HAVE TOLD YOU OVER AND OVER AGAIN, THERE ARE NO UNIMPORTANT JOBS, WHICH ALSO MEANS AS I HAVE TOLD YOU, THERE ARE NO UNIMPORTANT PEOPLE IN THIS COMPANY. I WANT TO TELL YOU THAT AS FAR AS WE ARE CONCERNED, IF THERE IS SOMETHING THAT RIGHTFULLY SHOULD BE LOOKED AT, RE-EXAMINED IN THE LIGHT OF EMPLOYEE NEEDS - WE ARE READY, WILLING AND ABLE TO DO IT RIGHT AWAY. IF THERE IS ANY CONDITION OR PAY PRACTICE OR ANY PERSONAL SITUATION OR PROBLEM THAT AN EMPLOYEE FEELS SHOULD BE RE-EXAMINED, WE WILL DO THIS AND SETTLE IT HONESTLY AND FORTHRIGHTLY TO THE BENEFIT AND JUSTICE OF ALL CONCERNED. WE WILL NOT ALLOW ANY INJUSTICE TO AN EMPLOYEE TO GO WITHOUT ACTION BY US. THIS WE HAVE PROVED TO YOU OVER AND OVER AGAIN.

5. LET US TALK THEN ABOUT WHAT EXACTLY A UNION CAN DO FOR BELL & HOWELL EMPLOYEES, AS WELL AS WHAT THEY CAN'T DO. NOW HERE IS WHAT THEY CANNOT DO. THE UNION HAS NO RIGHT TO HIRE ANYBODY, PROMOTE, DEMOTE, CLASSIFY, TRANSFER, SUSPEND ANYBODY, DISCIPLINE ANYBODY OR DISCHARGE ANY EMPLOYEE FOR ANY REASON WHATSOEVER. ON THE OTHER HAND, THE COMPANY HAS THE RIGHT TO DO ALL OF THOSE THINGS. THE UNION HAS ABSOLUTELY NO RIGHT TO DETERMINE WHAT TYPE OF BUSINESS WE WILL CONDUCT - WHAT LOCATIONS WE WILL PUT OUR PLANTS IN - HOW WE WILL POSITION OUR EQUIPMENT IN THE SHOP - WHAT MATERIALS WE USE - WHAT SCHEDULES WE USE - WHAT TECHNIQUES WE WILL USE TO MAKE OUR PRODUCT - HOW MANY EMPLOYEES WE WILL EMPLOY. THEY WILL HAVE NO RIGHT TO STOP THE COMPANY FROM LAYING OFF IF SUCH A THING IS NECESSARY FOR ECONOMIC REASONS. AS A MATTER OF FACT, LET ME REFER YOU RIGHT NOW TO A COMPANY LIKE NORTHERN ELECTRIC WHICH IS IN THE MIDDLE OF A LAYOFF SITUATION THAT IS MASSIVE AT THIS VERY MOMENT. THEY ARE A UNION SHOP. NO UNION CAN GUARANTEE WORK. AS A MATTER OF FACT WE MAY EVEN HAVE SOME GIRLS HERE THAT WORKED AT NORTHERN ELECTRIC WHO CAN CORROBORATE WHAT I AM TELLING YOU.

WHAT CAN A UNION DO? THEY CAN SIT DOWN AND BARGAIN FOR YOU. AND, IF YOU CHOSE TO BE REPRESENTED BY A UNION AND VOTE ONE IN, WE WILL SIT DOWN AT THE TABLE AND BARGAIN ABOUT EVERYTHING THAT THIS COMPANY GIVES TO

ITS EMPLOYEES. WE WILL BARGAIN ABOUT WAGES - WE WILL BARGAIN ABOUT HOURS - WE WILL BARGAIN ABOUT CONDITIONS - AND WE WILL BARGAIN ABOUT BENEFITS, BUT YOU MUST REMEMBER THERE IS ABSOLUTELY NO GUARANTEE THAT THE UNION WILL GET FOR YOU WHAT IT HAS PROMISED YOU. THE ONLY THING THAT IT CAN GET FOR YOU IS WHAT THE COMPANY CAN ECONOMICALLY AFFORD TO DO. ONE THING I DO WANT TO TELL YOU AND THAT IS THIS, WE WILL NOT PERMIT ANYBODY TO TAMPER WITH YOUR PROFIT SHARING. WE WILL NOT TOLERATE AN OUTSIDE ORGANIZATION'S ATTEMPT TO GET CONTROL OF YOUR PENSION AND ESTATE BUILDING FUND. THIS IS SOMETHING THAT WE HOLD INVIOLEATE AS FAR AS OUR EMPLOYEES ARE CONCERNED. THOSE OF YOU WITH SENIORITY KNOW WHAT I AM TALKING ABOUT. SOME OF THE EMPLOYEE ACCOUNTS DURING 1967 APPRECIATED BY HUNDREDS OF DOLLARS. IT IS TRUE THAT WITH THE NEWER EMPLOYEES, THE START IS SLOW. BUT EVEN THERE THE APPRECIATION COMES TO 7 CENTS PER HOUR WHEN COSTED OUT. ALSO WE HAVE CALCULATED THAT IN ADDITION TO PROFIT SHARING, FRINGE BENEFITS ARE WORTH TO YOU OVER 28 CENTS PER HOUR YOU WORK. THESE WILL BE BARGAINED FOR.

6. YOU MUST REMEMBER THAT THE BIG INTEREST THAT AN OUTSIDE ORGANIZATION OR A UNION HAS IN YOU IS THE AMOUNT OF MONEY YOU WILL PAY IN DUES, ASSESSMENTS AND INITIATION FEES. AND BELIEVE ME A LOT OF MONEY IS NEEDED TO PAY THE SALARIES OF UNION OFFICERS AND UNION ORGANIZERS. SHOULD YOU WISH TO CHECK ON HOW MUCH MONEY A UNION OFFICER AND A UNION ORGANIZER MAKES DURING A GIVEN YEAR, IT IS ONLY NECESSARY TO WRITE THE LABOUR DEPARTMENT FOR A COPY OF THE UNION'S CONSTITUTION. IT TAKES AN AWFUL LOT OF MONEY TO SUPPORT ONE UNION OFFICIAL. MANY, MANY PEOPLE HAVE TO CONTRIBUTE A \$1.25 A WEEK - EVERY WEEK, WEEK IN AND WEEK OUT, IN ORDER TO SUPPORT THE BUSINESS OF RUNNING A UNION.
7. ALSO BEAR IN MIND THAT YOUR DUES WILL BE USED TO SUPPORT STRIKES THAT ARE CALLED IN OTHER AREAS. IT IS UNFAIR TO TAKE THE EFFICIENCY OF ONE COMPANY AND ONE GROUP OF EMPLOYEES TO SUPPORT THE INEFFICIENCY OF ANOTHER COMPANY AND ANOTHER GROUP OF EMPLOYEES THAT IS TOTALLY UNRELATED.
8. I HAVE ALSO BEEN INFORMED THAT SOME OF OUR EMPLOYEES HAVE BEEN BOTHERED IN OFF HOURS. ONE CASE HAS BEEN REPORTED TO ME WHERE ONE OF OUR GIRLS WAS CALLED A 'DUMB BITCH' BY AN EVENING VISITOR. I WANT YOU TO KNOW THAT BELL & HOWELL WILL DO ANYTHING POSSIBLE TO

ASSIST OUR PEOPLE IN PROTECTING THEMSELVES AGAINST THIS SORT OF THING. IF ANYONE SHOULD REPORT SUCH AN INCIDENT TO US DIRECTLY, WE WILL TAKE EVERY STEP NECESSARY TO SEE THAT THE PROPER AUTHORITIES ARE BROUGHT IN TO PROTECT OUR EMPLOYEES. I WANT YOU TO KNOW THAT I WOULD FIRE ANY SUPERVISOR WHO SPOKE THAT WAY TO ONE OF OUR GIRLS. SUCH A THING WOULD BE INTOLERABLE.

WE WANT TO RUN THIS PLANT IN SUCH A WAY THAT ANYBODY'S MOTHER OR SISTER COULD COME IN HERE AND BE SURE OF FAIR, DIGNIFIED TREATMENT. TO REFER TO SOME GIRL THAT WORKS FOR US AS A 'DUMB BITCH' IS THE HEIGHT OF DIS-RESPECT FOR SOMEONE WHO WORKS FOR A LIVING LIKE WE ALL DO.

FRANKLY, IT IS MY GREATEST PRIDE THAT WE HAVE BEEN ABLE TO MOVE OUT OF WHAT I CONSIDERED A LESS-THAN-PERFECT FACILITY INTO A PLACE THAT I KNOW THAT WE CAN BE PROUD OF - NOT JUST AS MANAGERS, BUT PROUD FOR OUR EMPLOYEES.

9. THERE ARE LATIN WORDS WHICH ARE "CUI BONO" - THAT IS THE QUESTION THAT THE ROMAN'S ASKED AFTER A BIG DEAL AND IT MEANS "WHO PROFITS"? IT'S IMPORTANT FOR YOU TO ASK YOURSELF THIS QUESTION, BECAUSE OF THE VIGOR OF THIS ORGANIZATION'S DRIVE. WHO PROFITS? WHO GETS YOUR DUES? WHO IS WORKING VERY, VERY HARD TO SEE THAT THIS ORGANIZATION'S DRIVE IS SUCCESSFUL FOR THE UNION AND WHY ARE THEY WORKING SO HARD? WHAT HAVE THEY BEEN PROMISED? HAS ANYONE BEEN PROMISED THE JOB OF AN ORGANIZER WITH A CAR AND AN EXPENSE ACCOUNT? HAS ANYONE BEEN PROMISED THE JOB OF SHOP STEWARD WHICH GUARANTEES SENIORITY AND IMMUNITY FROM LAYOFF? WHO IS GOING TO GET THIS PARTICULAR PLUM - AND WHY? AND AT THE EXPENSE OF WHOM? ASK YOURSELVES THE SAME QUESTIONS.
10. THEREFORE I WANT TO WARN AND ADMONISH ALL OF YOU TO BE VERY VERY CAREFUL ABOUT PAYING A DOLLAR AND SIGNING YOUR NAME. REMEMBER AS SOON AS YOU'VE PAID A DOLLAR AND SIGNED SOMETHING YOU ARE A MEMBER - DO NOT BE DELUDED INTO THINKING THAT YOU HAVE ONLY PAID A DOLLAR FOR A RIGHT TO VOTE FOR OR AGAINST A UNION. IT MAY WELL TURN OUT THAT YOU HAVE PAID A DOLLAR AND HAVE BECOME A MEMBER OF THE ORGANIZATION WHICH NOW HAS THE RIGHT TO REPRESENT YOU AND FROM WHICH YOU CANNOT ESCAPE, WITHOUT RESIGNING. I ALSO WANT TO MAKE ONE OTHER POINT WHILE WE ARE TALKING ABOUT JOINING THINGS - YOU HAVE PROBABLY BEEN TOLD BY THOSE WHO ARE TRYING TO ORGANIZE YOU, THAT EVERYBODY

HAS JOINED ALREADY, SO WHY DON'T YOU. DON'T BE MISLED - MOST OF THE PEOPLE IN THIS PLANT HAVE NOT SIGNED ANYTHING AND HAVE NOT PAID A DOLLAR AND HAVE NOT JOINED. I WANT YOU TO KNOW THAT AS FAR AS THIS COMPANY IS CONCERNED, WE ARE NOT GOING TO TAMPER WITH ANYBODY'S RIGHT TO JOIN OR NOT JOIN A UNION. HOWEVER IT'S ALSO ONLY FAIR AND ENCUMBENT UPON US TO TELL YOU THAT WE DON'T WANT A LABOUR ORGANIZATION TO COME BETWEEN US.

YOU AND I AND THE DEPARTMENT HEADS, FOREMEN, SUPERVISORS OF THIS COMPANY HAVE WORKED WELL TOGETHER OVER THE YEARS. DO NOT LET ANYONE COME BETWEEN YOU AND I AND LET US CONTINUE TO WORK WELL TOGETHER. IN THIS WAY, OPPORTUNITIES FOR ALL OF YOU WILL OPEN UP, AND THOSE THAT HAVE EARNED THEM WILL GET THEM.

THAT IS ALL I HAVE TO SAY TO YOU THIS MORNING, EXCEPT REMEMBER AGAIN, NO ONE CAN REPRESENT YOU BETTER THAN YOURSELF.

THANK YOU.

8. A NUMBER OF EMPLOYEES CALLED BY THE APPLICANT GAVE EVIDENCE AS TO THEIR RECOLLECTION OF UNDERELL'S SPEECH. SHIRLEY DENNIS, MARY MARACLE AND MARY POWERS ALL TESTIFIED THAT UNDERELL HAD STATED THAT A UNION WAS TRYING TO GET INTO THE PLANT. ACCORDING TO THEIR TESTIMONY, UNDERELL SAID THAT THERE WAS GOING TO BE NO UNION AT BELL & HOWELL AND THAT THE COMPANY WAS GOING TO FIGHT AGAINST THE UNION. ALL OF THEM TESTIFIED THAT UNDERELL INFORMED THEM THAT NO UNION WAS GOING TO INTERFERE WITH THE COMPANY'S PROFIT SHARING PLAN. MRS. DENNIS' EVIDENCE IS THAT UNDERELL TOLD THE EMPLOYEES THAT ANY OF THEM WHO WANTED TO RESIGN FROM THE UNION COULD DO SO AND GET BACK THEIR DOLLAR. SHE FURTHER TESTIFIED THAT UNDERELL STATED THAT THE UNION HAD NOTHING TO DO WITH HIRING AND FIRING OR DAYS OFF AND THAT ALL THE UNION WANTED WAS THE EMPLOYEES' MONTHLY DUES. MRS. MARACLE'S EVIDENCE IS THAT UNDERELL SAID THAT ANYONE WHO HAD NOT JOINED THE UNION NEED NOT WORRY AS EVERYONE HAD NOT JOINED.

9. MOLLY SALMON, WHO WAS CALLED BY THE RESPONDENT, ON THE OTHER HAND, DID NOT RECALL UNDERELL SAYING THAT HE WOULD FIGHT THE UNION NOR DID SHE RECALL HIM SAYING THAT ALL THE UNION WANTED WAS THE EMPLOYEES' MONTHLY DUES. ALSO SHE COULD NOT RECALL UNDERELL TELLING THE EMPLOYEES THAT THEY NEED NOT WORRY IF THEY HAD NOT JOINED THE UNION AS OTHERS HAD NOT JOINED. SHE DID RECALL, HOWEVER, UNDERELL SAYING THAT THE UNION HAD NOTHING TO DO WITH HIRING AND FIRING.

10. THE EVIDENCE IS THAT ON JUNE 14TH, 1968, UNDERELL CALLED ANOTHER MEETING OF ALL OF THE EMPLOYEES IN THE CAFETERIA. AS IN THE CASE OF THE MEETING ON MAY 2ND, THERE IS A CONFLICT BETWEEN THE EVIDENCE OF WITNESSES CALLED BY THE APPLICANT AND THE RESPONDENT AS TO WHETHER THE MEETING TOOK PLACE ENTIRELY DURING THE LUNCH BREAK OR WHETHER IT CONTINUED PAST 12:30 P.M. INTO WORKING HOURS. ACCORDING TO UNDERELL, AT THAT MEETING HE READ THE FOLLOWING STATEMENT TO THE EMPLOYEES:

I'M AWFULLY SORRY TO HAVE TO TAKE SOME OF YOUR TIME FOR AN ANNOUNCEMENT THAT IS NOT VERY PLEASANT. I WOULD LIKE TO ADVISE YOU SO AS TO AVOID ANY MISUNDERSTANDING THAT WE HAVE BEEN FORCED TO DISCHARGE ROBERT HALL, ONE OF OUR EMPLOYEES BECAUSE WE HAVE RECEIVED SEVERAL COMPLAINTS FROM OTHER EMPLOYEES THAT HE HAS DURING WORKING HOURS, ATTEMPTED TO PERSUADE THEM TO JOIN A UNION.

AS YOU WILL RECALL I ADVISED BEFORE, THAT THIS ACTIVITY CANNOT BE TOLERATED BECAUSE IT IS VERY DISRUPTING TO OUR PRODUCTIVE EFFORTS.

ANYTHING THAT TAKES AWAY FROM OUR PRODUCTIVE TIME THREATENS THE JOB SECURITY OF ALL OF US. THIS ACTION WOULD HAVE BEEN THE SAME IF ROBERT HALL WERE SOLICITING ON BEHALF OF A SOAP COMPANY OR TRYING TO SELL COSTUME JEWELLRY DURING WORKING HOURS.

I WOULD LIKE TO THANK YOU FOR THE ATTENTION YOU HAVE GIVEN ME.

THE EVIDENCE OF SOME OF THE WITNESSES CALLED BY THE APPLICANT AS TO THE CONTENT OF UNDERELL'S STATEMENT OF JUNE 14TH IS NOT ENTIRELY IN ACCORD WITH THE ABOVE QUOTED STATEMENT.

11. GERALDINE THOMSON TESTIFIED THAT ROBERT HALL APPROACHED HER DURING HER WORKING HOURS ON THE MORNING OF JUNE 12TH AND SOLICITED HER SUPPORT FOR THE APPLICANT. ACCORDING TO HER EVIDENCE, SHE IMMEDIATELY REPORTED THIS ENCOUNTER TO HER FOREMAN, BY THE NAME OF LAMB, WHO ASKED HER TO SUBMIT A WRITTEN STATEMENT OUT-LINING THE INCIDENT, WHICH SHE DID. MRS. THOMSON TESTIFIED THAT HALL APPROACHED HER AGAIN THAT AFTERNOON FOR THE SAME PURPOSE. SHE STATED IN EVIDENCE THAT SHE AGAIN WENT TO LAMB AND GAVE ANOTHER WRITTEN STATEMENT ABOUT HALL'S SECOND APPROACH TO HER SOLICITING SUPPORT FOR THE APPLICANT. BOTH STATEMENTS, WHICH WERE FILED IN EVIDENCE, ARE WITNESSES BY LAMB.

12. MARY POWERS TESTIFIED THAT WHEN SHE COMMENCED TO WORK FOR THE RESPONDENT COMPANY AT THE END OF APRIL 1968, VALERIE BRAIN, THE PERSONNEL MANAGER, INTERVIEWED HER. ACCORDING TO MRS. POWERS, MISS BRAIN STATED ON THAT OCCASION THAT SOME OF THE GIRLS WERE TRYING TO ORGANIZE A UNION AND THAT NO DOUBT, AS A NEW EMPLOYEE, SHE WOULD BE APPROACHED TO JOIN. MRS. POWERS' TESTIMONY IS THAT MISS BRAIN ASKED THAT SHE BE KEPT INFORMED ABOUT ANY UNION ACTIVITY. MISS BRAIN, FOR HER PART, COULD NOT RECALL HAVING MADE THE ABOVE STATEMENTS TO MRS. POWERS AND INITIALLY SHE DENIED EITHER KNOWING OR HAVING MADE ANY EFFORTS TO FIND OUT ABOUT THE APPLICANT'S ORGANIZING CAMPAIGN.

13. UNDERELL ADMITTED IN CROSS-EXAMINATION THAT WHEN HE BECAME AWARE OF THE UNION'S ORGANIZING CAMPAIGN TOWARDS THE END OF APRIL HE COMMUNICATED THIS INFORMATION TO THE COMPANY'S HEAD OFFICE IN CHICAGO. AS A RESULT, R. I. FINKLEMAN, THE COMPANY'S INDUSTRIAL RELATIONS MANAGER, WAS SENT FROM THE RESPONDENT'S HEAD OFFICE TO THE TORONTO PLANT TO ADVISE AND AID UNDERELL IN AN EFFORT TO DEFEAT THE UNION'S EFFORTS. MISS BRAIN ALSO ADMITTED BEING AWARE OF FINKLEMAN'S PRESENCE AND THE REASON FOR IT. IT APPEARS FROM BOTH UNDERELL'S AND MISS BRAIN'S EVIDENCE THAT FINKLEMAN HAD A HAND IN THE PREPARATION OF UNDERELL'S SPEECH OF MAY 2ND AND IN THE STATEMENT MADE TO THE EMPLOYEES ON JUNE 14TH CONCERNING THE DISCHARGE OF ROBERT HALL.

14. IN ADDITION TO THE WRITTEN REPORTS OF GERALDINE THOMSON, OTHER EMPLOYEES SUBMITTED WRITTEN STATEMENTS, ALL WITNESSED BY LAMB, STATING THAT ON JUNE 10TH, 11TH OR 12TH, ROBERT HALL HAD APPROACHED THEM DURING WORKING HOURS SOLICITING SUPPORT FOR THE APPLICANT. ONE WRITTEN STATEMENT ASSERTS THAT MARY POWERS HAD SOLICITED THE SIGNATORY'S SUPPORT FOR THE UNION ON THE RESPONDENT'S PREMISES. UNDERELL AND MISS BRAIN TESTIFIED THAT BASED ON THESE WRITTEN STATEMENTS AND OTHER ORAL REPORTS, THE DECISION WAS MADE BY UNDERELL TO DISCHARGE HALL. THE EVIDENCE IS THAT HALL WAS CALLED INTO THE PERSONNEL OFFICE ON JUNE 13TH AND WAS DISCHARGED, EFFECTIVE ON THAT DATE. HALL'S TERMINATION OF EMPLOYMENT FORM READS - "YOU ARE DISCHARGED FOR ATTEMPTING TO PERSUADE OTHER EMPLOYEES DURING WORKING HOURS TO BECOME UNION MEMBERS." IT IS SIGNED BY THE FOREMAN LAMB, MISS BRAIN AND HALL.

15. THE NOTICE TO THE EMPLOYEES OF THE APPLICANT'S APPLICATION FOR CERTIFICATION (FORM 5) WAS POSTED ON JUNE 17TH, 1968. WE FIND ON THE EVIDENCE THAT PETITIONS OPPOSING THE APPLICATION WERE OPENLY CIRCULATED AMONG THE EMPLOYEES IN THE PLANT DURING WORKING HOURS. IT APPEARS THAT BOTH MOLLY SALMON AND ANOTHER EMPLOYEE IRIS HARPER WERE ACTIVE IN THE CIRCULATION OF THE PETITIONS. WE MAKE THIS FINDING DESPITE UNDERELL'S TESTIMONY THAT HE SPECIFICALLY DIRECTED HIS SUPERVISORY STAFF NOT TO ALLOW ANY SOLICITING ON COMPANY TIME.

16. LET US ASSUME, WITHOUT MAKING A FINDING, THAT UNDERELL SAID NO MORE IN HIS SPEECH TO THE RESPONDENT'S EMPLOYEES ON MAY 2ND AND IN HIS STATEMENT OF JUNE 14TH THAN THAT WHICH IS SET OUT IN PARAGRAPHS 7 AND 10 RESPECTIVELY. FURTHER, LET US ASSUME, AS UNDERELL TESTIFIED, THAT HE REQUESTED THE EMPLOYEES TO ATTEND THE MEETINGS AND THAT THEY TOOK PLACE IN THE COMPANY CAFETERIA COMPLETELY DURING THE EMPLOYEES' LUNCH BREAK.

17. IN OUR OPINION UNDERELL'S "REQUEST" THAT THE EMPLOYEES ATTEND THE MEETINGS AMOUNTED TO AN ORDER. IT IS DOUBTFUL THAT ANY EMPLOYEE FELT THEY HAD A CHOICE IN THE MATTER. THE TOTAL ATTENDANCE AT THE MEETINGS CLEARLY SUGGESTS THE ABSENCE OF ANY REAL ALTERNATIVE FOR THE EMPLOYEES. WE WOULD ALSO REFER TO THE "PERMISSION" WHICH UNDERELL GAVE TO THE EMPLOYEES TO LEAVE THE MEETING WHICH WAS EXPRESSED IN THE FOLLOWING TERMS:

I AM TOLD A UNION IS TRYING TO ORGANIZE US.
I WANT TO BE CLEAR ABOUT ONE THING. NO ONE
HAS TO STAY TO HEAR WHAT I HAVE TO SAY. IT
IS OUTSIDE OF WORKING HOURS AND ANYONE WHO
WANTS TO STAY AND LISTEN, THEY CAN, JUST AS
ANYONE WHO WISHES TO LEAVE MAY DO SO. THERE
IS NO INTENTION ON MY PART TO CONSIDER ANYONE
WHO LEAVES SHALL SUFFER IN ANY SHAPE OR FORM
BECAUSE THEY LEAVE.

WHILE UNDERELL HIMSELF TURNED HIS BACK FOR A FEW MOMENTS THE REMAINING MEMBERS OF MANAGEMENT CONTINUED TO FACE THE EMPLOYEES. IN THESE CIRCUMSTANCES, THE FACT THAT THE MEETING WAS HELD DURING THE EMPLOYEES' HALF-HOUR LUNCH BREAK NOTWITHSTANDING, THE EMPLOYEES QUITE REASONABLY WOULD BE UNWILLING TO LEAVE THE MEETING, FOR TO DO SO WOULD CLEARLY HAVE IDENTIFIED THEM AS SUPPORTERS OF THE APPLICANT. FURTHER, IT IS UNLIKELY THAT UNDERELL'S ABOVE STATEMENT OR HIS ASSURANCE THAT THE COMPANY WOULD NOT INTERFERE WITH THE EMPLOYEES' RIGHT TO ORGANIZE WOULD ALLAY IN THE EMPLOYEES A FEELING OF APPREHENSION THAT THEY MIGHT INDEED "SUFFER" UNDESIRABLE CONSEQUENCES SHOULD THEY BE SO IDENTIFIED. IN THIS REGARD, IT IS IMPORTANT TO APPRECIATE THE SENSITIVE NATURE OF THE RELATIONSHIP THAT EXISTS BETWEEN EMPLOYEES AND THEIR EMPLOYER. THE BOARD SUCCINCTLY EXPRESSED BOTH THE NATURE AND THE EFFECT OF THAT RELATIONSHIP IN THE PIGOTT MOTORS (1961) LIMITED CASE, C.L. L.C. VOL. 2, 1960-1964, ¶16,264 AT P. 1130 IN THE FOLLOWING WORDS:

IN VIEW OF THE RESPONSIVE NATURE OF HIS
RELATIONSHIP WITH HIS EMPLOYER, AND OF HIS
NATURAL DESIRE TO WANT TO APPEAR TO IDENTIFY
HIMSELF WITH THE INTERESTS AND WISHES OF HIS
EMPLOYER, AN EMPLOYEE IS OBVIOUSLY PECULIARLY
VULNERABLE TO INFLUENCES, OBVIOUS OR DEVIOS,
WHICH MAY OPERATE TO IMPAIR OR DESTROY THE FREE
EXERCISE OF HIS RIGHTS UNDER THE ACT.

BEARING IN MIND THE ABOVE PASSAGE, ONLY AN EMPLOYEE OF UNUSUAL CONVICTION OR FORTITUDE WOULD HAVE HAD THE TEMERITY TO LEAVE THE MEETING IN THE CIRCUMSTANCES IN WHICH THE "PERMISSION" TO DO SO WAS GIVEN. THE AVERAGE EMPLOYEE NATURALLY WOULD BE INCLINED TO ATTEMPT TO CONCEAL FROM MANAGEMENT HIS OR HER SUPPORT OR SYMPATHY FOR THE APPLICANT, PARTICULARLY AT THAT STAGE IN THE ORGANIZING CAMPAIGN. IN THE CASE OF THE JUNE 14TH MEETING, WHEN UNDERELL ANNOUNCED THE DISCHARGE OF HALL, NO SIMILAR "PERMISSION" WAS GIVEN. THE REALITY OF THE SITUATION IN BOTH INSTANCES WAS THAT THE EMPLOYEES WERE A "CAPTIVE" AUDIENCE.

18. LET US NOW DEAL WITH THE CONTENT OF UNDERELL'S SPEECH OF MAY 2ND. IN THE FIRST TWO NUMBERED PARAGRAPHS OF THE COMPANY'S "POINT OF VIEW", UNDERELL DWELT ON THE NECESSITY OF THE RESPONDENT OPERATING AT A PROFIT IN ORDER TO CONTINUE IN BUSINESS. WE WOULD MENTION THAT THE STATEMENT IN PARAGRAPH 2 WHICH READS "WE ARE A CANADIAN COMPANY, I CAN TELL YOU HONESTLY AND FORTHRIGHTLY THAT THE ONLY WAY WE CAN SURVIVE IS TO BE PROFITABLE" IS AN INACCURATE AND MISLEADING STATEMENT AND WAS SO KNOWN TO UNDERELL. THE FACT IS THAT THE TORONTO COMPANY IS A WHOLLY OWNED SUBSIDIARY OF AN AMERICAN COMPANY WITH HEAD OFFICE IN CHICAGO. BE THAT AS IT MAY, WITHOUT MENTIONING THE APPLICANT, THE EFFECT OF THE TWO PARAGRAPHS WAS INTENDED AND MUST HAVE PLANTED IN THE MINDS OF THE EMPLOYEES THE MISGIVING THAT IF THE APPLICANT WAS SUCCESSFUL IN ITS ORGANIZING CAMPAIGN THE RESPONDENT'S OPERATIONS WOULD CEASE TO BE PROFITABLE AND THAT THE JOBS OF ALL OF THE EMPLOYEES MIGHT THEN BE PLACED IN JEOPARDY. IN OTHER WORDS, UNDERELL WAS MAKING A VEILED THREAT TO THE JOB SECURITY OF THE EMPLOYEES.

19. NUMBERED PARAGRAPHS 3, 5, 6, 7, 8 AND 9 CONSTITUTE A GENERAL ATTACK ON THE APPLICANT, PARTS OF WHICH VERGE ON THE INFLAMMATORY. THESE PARAGRAPHS WERE OBVIOUSLY INTENDED TO "BULLY" THE EMPLOYEES NOT TO ASSOCIATE THEMSELVES WITH THE APPLICANT WHICH UNDERELL PAINTED AS A RUTHLESS AND SELFISH ORGANIZATION INTERESTED ONLY IN GETTING ITS HANDS ON THE EMPLOYEES' UNION DUES. MOREOVER, SOME OF THE STATEMENTS CONTAINED IN THE ABOVE CITED PARAGRAPHS AMOUNT TO A DECLARATION THAT THE COMPANY INTENDED TO REFUSE TO BARGAIN WITH THE APPLICANT ON A NUMBER OF BARGAINABLE ISSUES.

20. NUMBERED PARAGRAPH 10 READS IN PART:

I ALSO WANT TO MAKE ONE OTHER POINT WHILE WE ARE TALKING ABOUT JOINING THINGS - YOU HAVE PROBABLY BEEN TOLD BY THOSE WHO ARE TRYING TO ORGANIZE YOU, THAT EVERYBODY HAS JOINED ALREADY, SO WHY DON'T YOU. DON'T BE MISLED - MOST OF THE PEOPLE IN THIS PLANT HAVE NOT SIGNED ANYTHING AND HAVE NOT PAID A DOLLAR AND HAVE NOT JOINED.

THE SUGGESTION CONTAINED IN THE ABOVE QUOTED PASSAGE IS THAT THE RESPONDENT KNEW WHICH EMPLOYEES WERE SUPPORTERS OF THE APPLICANT AND WHICH WERE NOT. ALSO THERE IS AN UNMISTAKABLE IMPLICATION THAT SUPPORT FOR THE APPLICANT WOULD BE FUTILE BECAUSE OF THE UNION'S LACK OF SUPPORT. BY THIS STATEMENT, THE RESPONDENT WAS ATTEMPTING TO WEAKEN THE RESOLVE OF ANY EMPLOYEES WHO WERE SO INCLINED TO SUPPORT THE APPLICANT.

21. WE COME NOW TO A CONSIDERATION OF UNDERRELL'S STATEMENT ON JUNE 14TH. THE PROCEDURE OF CALLING ALL THE EMPLOYEES TOGETHER FOR THE PURPOSE OF ANNOUNCING THE DISCHARGE OF ROBERT HALL WAS A MOST EXTRAORDINARY STEP. WHILE OSTENSIBLY UNDERRELL ONLY CALLED THE MEETING TO WARN THE EMPLOYEES AGAINST ANY SOLICITING ON COMPANY PREMISES DURING WORKING HOURS, HE WAS INFACIT UTILIZING THE DISCHARGE AS AN OBJECT LESSON FOR THE OTHER EMPLOYEES. THE EMPLOYEES WERE BOUND TO INTERPRET THE DISCHARGE OF HALL AS AN INDICATION OF THE DANGERS INVOLVED IN SUPPORTING THE APPLICANT. THIS IN TURN WAS A STRONG INDUCEMENT TO THE EMPLOYEES TO SUBMERGE ANY DESIRES THEY MAY HAVE HAD TO ACTUALLY SUPPORT THE APPLICANT.

22. IN THE TAGGART SERVICE LIMITED CASE, (1964) C.L.L.R. TRANSFER BINDER "64-'66, ¶16,015 AT P. 13, 055, THE CANADA LABOUR RELATIONS BOARD MADE THE FOLLOWING STATEMENT REGARDING AN EMPLOYER'S RIGHT TO EXPRESS HIS VIEWS, WITH WHICH WE ARE IN ACCORD:

AN EMPLOYER MAY EXPRESS HIS VIEWS AND GIVE FACTS IN APPROPRIATE MANNER AND CIRCUMSTANCES ON THE ISSUES INVOLVED IN REPRESENTATION PROCEEDINGS IN SO FAR AS THESE DIRECTLY AFFECT HIM AND HAS THE RIGHT TO MAKE APPROPRIATE REPLY TO PROPAGANDA DIRECTED AGAINST HIM IN RELATION THERETO. HOWEVER HE SHOULD BEAR IN MIND IN SO DOING THE FORCE AND WEIGHT WHICH SUCH EXPRESSIONS OF VIEWS MAY HAVE UPON THE MINDS OF HIS EMPLOYEES AND WHICH DERIVE FROM THE NATURE AND EXTENT OF HIS AUTHORITY AS EMPLOYER OVER HIS EMPLOYEES WITH RESPECT TO THEIR WAGES, WORKING CONDITIONS AND CONTINUITY OF EMPLOYMENT. HE SHOULD TAKE CARE THAT SUCH EXPRESSIONS OF VIEWS DO NOT CONSTITUTE AND MAY NOT BE REASONABLY CONSTRUED BY HIS EMPLOYEES TO BE AN ATTEMPT BY MEANS OF INTIMIDATION, THREATS, OR OTHER MEANS OF COERCION TO INTERFERE WITH THEIR FREEDOM TO JOIN A TRADE UNION OF THEIR CHOICE OR TO OTHERWISE SELECT A BARGAINING AGENT OF THEIR OWN CHOICE.

APPLYING THE ABOVE STANDARD, UNDERELL'S SPEECH OF MAY 2ND AND HIS STATEMENT OF JUNE 14TH EXCEEDED THE BOUNDS OF MERELY AN EXPRESSION OF THE RESPONDENT'S VIEWS. PERHAPS TO AN OUTSIDER UNDERELL'S SPEECH OF MAY 2ND IN PARTICULAR MIGHT ONLY BE CONSIDERED AS A VIGOROUS PRESENTATION OF HIS CONVICTIONS. LOOKING AT IT, HOWEVER, FROM THE VIEWPOINT OF THE CAPTIVE AND RESPONSIVE AUDIENCE TO WHICH IT WAS ADDRESSED, THE SPEECH IS RIDDLED THROUGHOUT WITH VEILED THREATS THAT COULD NOT HAVE FAILED TO HAVE HAD AN INTIMIDATING AND COERCIVE EFFECT UPON THE EMPLOYEES IN EXPRESSING THEIR TRUE WISHES.

23. WE WOULD MENTION HERE THE EVIDENCE LEADING UP TO THE DISCHARGE OF ROBERT HALL. WE DO NOT ACCEPT THE TESTIMONY OF GERALDINE THOMSON THAT, ON HER OWN INITIATIVE, SHE REPORTED THAT HALL HAD APPROACHED HER TO JOIN THE APPLICANT. WE ALSO FIND IT DIFFICULT TO BELIEVE THAT FIVE OTHER EMPLOYEES, WITHOUT ANY ENCOURAGEMENT, CAME FORWARD AND GAVE TO MANAGEMENT WRITTEN STATEMENTS CONCERNING EMPLOYEES WHO WERE ACTIVE IN THE APPLICANT'S ORGANIZING CAMPAIGN. MISS BRAIN DENIED THAT SHE SOUGHT INFORMATION CONCERNING THE UNION ACTIVITIES. WE FOUND MISS BRAIN TO BE A MOST RELUCTANT AND EVASIVE WITNESS. SHE APPEARED TO BE HIGHLY APPREHENSIVE OF SAYING ANYTHING THAT MIGHT INJURE THE POSITION OF THE RESPONDENT. AS A RESULT, WE ARE PREPARED TO PLACE LITTLE RELIANCE ON HER EVIDENCE. IT IS OUR CONCLUSION FROM HER TESTIMONY IN CROSS-EXAMINATION THAT SHE BOTH KNEW OF THE APPLICANT'S ORGANIZING CAMPAIGN AND SOUGHT INFORMATION ABOUT IT. FURTHER, IT IS NOT UNREASONABLE TO ASSUME THAT THE EMPLOYEES WERE AWARE OF HER ACTIVITIES.

24. IN LIGHT OF THE EVIDENCE OF THE OPEN MANNER IN WHICH THE PETITIONS EXPRESSING OPPOSITION TO THE APPLICATION WERE CIRCULATED ON COMPANY TIME, WE ARE SATISFIED THAT MEMBERS OF MANAGEMENT MUST HAVE BEEN AWARE OF THIS ACTIVITY AND AT LEAST TACITLY LENT THEIR SUPPORT. WE MAKE THIS FINDING DESPITE UNDERELL'S TESTIMONY THAT HE TOLD THE SUPERVISORY STAFF THAT THERE WAS TO BE NO ACTIVITY IN THE PLANT EITHER FOR OR AGAINST THE UNION. CERTAINLY IT MUST HAVE APPEARED TO THE EMPLOYEES THAT THE PETITIONS WERE BEING CIRCULATED WITH THE SUPPORT IF NOT AT THE BEHEST OF MANAGEMENT. THE INACTION OF THE RESPONDENT WITH REGARD TO THE CIRCULATION OF THE PETITIONS, IN ANY EVENT, IS IN MARKED CONTRAST TO THE RESPONDENT'S REACTION UPON DISCOVERING THAT HALL WAS SOLICITING SUPPORT FOR THE APPLICANT ON THE PREMISES OF THE RESPONDENT DURING WORKING HOURS.

25. HAVING REGARD TO ALL OF THE EVIDENCE, IT IS OUR CONCLUSION THAT UNDERELL AND OTHER MEMBERS OF MANAGEMENT, ASSISTED BY FINKLEMAN, CAREFULLY PLANNED AND MADE A CONCERTED EFFORT TO THWART THE APPLICANT'S ORGANIZING CAMPAIGN. THE CUMULATIVE EFFECTS OF THE CONDUCT OF THE RESPONDENT, HOWEVER, WERE SUCH THAT IN THE RESULT THE EMPLOYEES' ABILITY TO MAKE A "FREE CHOICE", IN OUR JUDGMENT, WAS DESTROYED. FURTHER, WE ARE BY NO MEANS SATISFIED

THAT THE EFFECTS OF THE RESPONDENT'S CONDUCT HAVE BEEN DISSIPATED BY THE PASSAGE OF TIME. ACCORDINGLY, WE ARE OF THE OPINION THAT A REPRESENTATION VOTE IS NOT LIKELY TO DISCLOSE THE TRUE WISHES OF THE EMPLOYEES.

26. THE BOARD THEREFORE, IN THE EXERCISE OF ITS DISCRETION UNDER SECTION 7(5) OF THE ACT, FINDS THAT THE APPLICANT HAS ESTABLISHED ITS ENTITLEMENT TO OUTRIGHT CERTIFICATION WITHOUT THE TAKING OF A REPRESENTATION VOTE.

27. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER F. W. MURRAY:

OCTOBER 8, 1968.

I DISSENT.

1. THE APPLICANT WAS ORIGINALLY IN A VOTE POSITION IN THAT THE EVIDENCE DISCLOSED THAT MORE THAN 50% BUT LESS THAN 55% OF THE EMPLOYEES OF THE RESPONDENT WERE MEMBERS OF THE APPLICANT ON JUNE 21ST, 1968, THE TERMINAL DATE FIXED BY THE BOARD FOR THE PURPOSES OF ASCERTAINING MEMBERSHIP UNDER SECTION 7, SUBSECTION (1) OF THE ONTARIO LABOUR RELATIONS ACT.

2. WHILE AUTHORITY IS GRANTED TO THE BOARD UNDER SECTION 7, SUBSECTION (5) OF THE SAID ACT, TO CERTIFY A TRADE UNION AS BARGAINING AGENT HAVING AS MEMBERS MORE THAN 50% OF THE EMPLOYEES IN THE BARGAINING UNIT, IF THE BOARD IS SATISFIED THAT THE TRUE WISHES OF THE EMPLOYEES WILL NOT BE DISCLOSED BY A REPRESENTATION VOTE, I AM OF THE OPINION THAT THE ONUS OF PROOF THAT THE TRUE WISHES OF THE EMPLOYEES WILL NOT BE DISCLOSED BY A REPRESENTATION VOTE LIES HEAVILY UPON THE APPLICANT. MOREOVER, THE BOARD, IN MY OPINION, BEFORE GIVING AN AFFIRMATIVE RULING WITH RESPECT TO THE APPLICABILITY OF SECTION 7, SUBSECTION (5) OF THE ACT AND ACCORDINGLY DENY A REPRESENTATION VOTE, MUST HAVE RECEIVED MUCH MORE CONCLUSIVE EVIDENCE TO PROVE INTIMIDATION BY THE EMPLOYER THAN THAT REQUIRED TO SET ASIDE THE EMPLOYEES' PETITION IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION WHERE A TRADE UNION HAS ORIGINALLY FILED SUFFICIENT EVIDENCE OF MEMBERSHIP WHICH WOULD, WITHOUT THE PETITION CASTING DOUBTS AS TO THE EMPLOYEES' INTENTIONS, HAVE RESULTED IN OUTRIGHT CERTIFICATION.

3. IN THIS CASE, APPROXIMATELY SIX WEEKS PRIOR TO THE APPLICANT FILING THE APPLICATION FOR CERTIFICATION, THE EMPLOYER SPOKE AT LENGTH TO THE EMPLOYEES ON THE SUBJECT OF THE UNION AND THE BASIC ECONOMIC POSITION OF THE COMPANY. IN THIS SPEECH, MADE ON MAY 2ND, 1968, MR. UNDERELL TWICE, ONCE EARLY IN HIS REMARKS, AND ONCE NEAR THE CONCLUSION, ASSURED THE EMPLOYEES

THAT THEY HAD THE RIGHT TO ORGANIZE, AND TO JOIN OR NOT TO JOIN A UNION, AND THAT NOTHING WOULD BE DONE BY THE COMPANY TO INTERFERE WITH THAT RIGHT. IT IS ALSO TO BE NOTED THAT THE EVIDENCE DISCLOSED THAT IT WAS NOT UNUSUAL FOR MR. UNDERELL TO CALL THE EMPLOYEES TO A MEETING IN THE CAFETERIA AND TO ADDRESS THEM ON VARIOUS SUBJECTS AS MATTERS AROSE. IT IS INTERESTING TO NOTE THAT THE APPLICATION FOR CERTIFICATION WAS FILED SOME FIVE TO SIX WEEKS LATER, AND DURING THAT PERIOD 27 OF THE EMPLOYEES SIGNED MEMBERSHIP CARDS REPRESENTING 43.5% OF THE TOTAL OF THOSE SIGNING MEMBERSHIP CARDS. I CAN ONLY ASSUME THAT THESE EMPLOYEES WERE NOT COERCED AND INTIMIDATED BY THE REMARKS OF MR. UNDERELL AND WERE STILL QUITE WILLING TO JOIN A TRADE UNION.

4. TURNING TO THE DISCHARGE OF ROBERT HALL, IT SHOULD ALSO BE NOTED THAT THE EVIDENCE CLEARLY SHOWED THAT AT LEAST ONE OTHER PERSON WAS SOLICITING DURING WORKING HOURS ON BEHALF OF THE APPLICANT UNION. ACCORDING TO MR. UNDERELL'S EVIDENCE, THIS PERSON DID NOT CONTINUE TO SOLICIT AFTER BEING WARNED NOT TO DO SO BY SUPERVISION AND THE COMPANY DID NOT TAKE ANY ACTION AGAINST THIS PERSON FOR THIS ACTIVITY. ON THE OTHER HAND, HIS EVIDENCE INDICATES THAT DESPITE THESE INSTRUCTIONS MR. HALL DID CONTINUE AND DID REPEATEDLY SOLICIT DURING WORKING HOURS. TO INTERPRET PARAGRAPH 21 OF THE BOARD'S DECISION, IT WOULD SEEM THAT THE RESPONDENT MISSED AN OPPORTUNITY TO PRESENT A FURTHER OBJECT LESSON TO THE OTHER EMPLOYEES.

5. I CANNOT HELP BUT CONCLUDE FROM THE STATEMENTS MADE IN THE MAJORITY DECISION, PARTICULARLY WITH RESPECT TO PARAGRAPHS 18, 19, AND 20, THAT MY COLLEAGUES ON THE BOARD ARE OF THE OPINION THAT THE POSITION OF EMPLOYEES IN THIS LAST HALF OF THE 20TH CENTURY IS UNCHANGED FROM THAT OF THEIR FOREFATHERS. THE CONCEPT THAT THE EMPLOYER'S WORD IS LAW AND THAT THE EMPLOYEES WOULD NOT DARE TO ACT, (EVEN SECRETLY), CONTRARY TO THE EMPLOYER'S WISHES APPARENTLY STILL PREVAILS IN MY COLLEAGUES' OPINION DESPITE THE AMPLE EVIDENCE THAT THIS WHOLE CONCEPT WENT OUT SHORTLY AFTER THE EXIT OF THE HORSE AND BUGGY. MANY CASES BEFORE THIS BOARD, PARTICULARLY THOSE INVOLVING WORK ASSIGNMENT UNDER SECTION 66, OR DECLARATIONS OF UNLAWFUL STRIKES UNDER SECTION 27, CLEARLY INDICATE THAT IF ANYONE IS HOLDING EMPLOYEES CAPTIVE, IT IS THE EMPLOYEES OWN ORGANIZATION.

6. I TAKE PARTICULAR EXCEPTION TO THE STATEMENTS MADE IN MY COLLEAGUES' DECISION THAT MR. UNDERELL'S STATEMENT CONCERNING THE COMPANY BEING A CANADIAN COMPANY AND THAT IT MUST BE PROFITABLE, IS INACCURATE AND MISLEADING AND WAS DESIGNED AS A THREAT TO THE JOB SECURITY OF THE EMPLOYEES. HAD MR. UNDERELL SAID THAT THE COMPANY, WHILE CHARTERED IN CANADA, WAS WHOLLY OWNED BY A COMPANY IN THE UNITED STATES WITH HEAD OFFICES IN CHICAGO AND THAT IT WOULD HAVE TO BE PROFITABLE, THIS MIGHT HAVE BEEN INTERPRETED TO BE MORE OF A THREAT THAT IN THE EVENT THAT A CANADIAN OPERATION WAS NOT PROFITABLE, THE MANUFACTURING FACILITIES WOULD BE MOVED TO THE UNITED STATES.

7. MUCH OF MR. UNDERELL'S REMARKS DEALT WITH CONDITIONS CONTAINED IN COLLECTIVE AGREEMENTS, AND THROUGHOUT HIS SPEECH, HE COMMENTS ON MANY OF THESE CONDITIONS. FOR EXAMPLE: THE PRIORITY OR SUPER-SENIORITY GRANTED TO A STEWARD IS COMMON IN MANY COLLECTIVE AGREEMENTS. HIS SPEECH INDICATED A WILLINGNESS TO NEGOTIATE IN ALL OF THE AREAS CUSTOMARILY COVERED BY NEGOTIATIONS, EXCEPT THAT HE INDICATED THAT THE COMPANY WOULD BE UNWILLING TO NEGOTIATE THE PROFIT SHARING PLAN, WHICH I TAKE IT IS CONNECTED TO THE EMPLOYEES' PENSION AND ESTATE FUND. IT IS UNDERSTANDABLE THAT THE MANAGEMENT OF THE COMPANY WOULD NOT WANT THESE ESTABLISHED PLANS AND RESULTING FUNDS DISTURBED OR POSSIBLY DISCONTINUED AS A RESULT OF COLLECTIVE BARGAINING. THE SPEECH, IN MY OPINION, CLEARLY INDICATES A WILLINGNESS ON BEHALF OF THE COMPANY TO NEGOTIATE ON ALL OF THE ISSUES COMMONLY INVOLVED IN COLLECTIVE BARGAINING AND I COULD NOT GATHER FROM THIS STATEMENT THAT THE COMPANY WAS GOING TO RESIST THE UNION AT EVERY TURN.

8. I DO NOT FIND THAT THE COMPANY USED COERCION, INTIMIDATION, THREATS, PROMISES OR UNDUE INFLUENCE, SUCH THAT WOULD CAUSE THE BOARD TO CONCLUDE THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE, AND, IN ACCORDANCE WITH SECTION 7, SUBSECTION (2) OF THE ACT. I WOULD HAVE DIRECTED THAT A REPRESENTATION VOTE BE TAKEN.

14922-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) v. FARQUHAR CONSTRUCTION LIMITED (RESPONDENT).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: OCTOBER 1, 1968.

1. PARAGRAPH 5 OF THE BOARD'S DECISION DATED AUGUST 12TH, 1968 READS AS FOLLOWS:

5. THE JOB SITE IN THIS CASE IS AT STURGEON FALLS, ONTARIO. AS AN INTERIM MEASURE THE BOARD FURTHER FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIPS OF SPRINGER, CALDWELL, BADGEROW, FIELD, GRANT AND PEDLEY, EXCEPTING THEREFROM THOSE PORTIONS OF THE TOWNSHIPS OF GRANT AND PEDLEY WHICH ARE INCLUDED IN THE AREA ENCOMPASSED BY A TWENTY MILE RADIUS OF THE NORTH BAY POST OFFICE, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

2. BY LETTER DATED SEPTEMBER 9TH, 1968, THE APPLICANT ENCLOSED A COPY OF THE MINUTES OF A MEETING WHICH IT HAD HELD WITH THE RESPONDENT. THE MINUTES INDICATE THAT THE RESPONDENT HAD ADOPTED THE POSITION THAT THE BOARD'S CERTIFICATE DATED AUGUST 12TH, 1968 COVERED ONLY THE SIX NAMED TOWNSHIPS BUT DID NOT INCLUDE STURGEON FALLS.

3. THE BODY OF A LETTER DATED SEPTEMBER 10TH, 1968 FROM THE REGISTRAR ADDRESSED TO THE RESPONDENT READS:

I AM ENCLOSING A COPY OF A LETTER DATED SEPTEMBER 9TH AND ATTACHED MINUTES WHICH WERE RECEIVED FROM LOCAL 493 OF THE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA.

ACCORDING TO THE MINUTES, THE POSITION THAT YOU HAVE TAKEN WITH THE UNION IS THAT THE BOARD'S CERTIFICATE DATED AUGUST 12TH, 1968 DOES NOT ENCOMPASS STURGEON FALLS. IF, IN FACT, THIS IS YOUR POSITION, I HAVE BEEN DIRECTED TO ADVISE YOU THAT IN PARAGRAPH 5 OF ITS DECISION, THE BOARD PARTICULARLY STATED THAT THE JOB SITE IN THIS CASE IS AT STURGEON FALLS, AND THEN WENT ON TO FIND A UNIT WHICH OBVIOUSLY ENCOMPASSES STURGEON FALLS.

I AM ENCLOSING THE BOARD'S MAP OF GEOGRAPHIC AREAS OF THE CONSTRUCTION INDUSTRY. YOU WILL NOTE IN "N.B.2" OF THE LEGEND OF THE MAP READS "TOWNSHIPS REFER TO AREAS ONLY AND INCLUDE ANY MUNICIPALITIES THEREIN".

ACCORDINGLY, THE BOARD HAS DIRECTED ME TO ADVISE YOU THAT STURGEON FALLS IS INCLUDED IN THE GEOGRAPHIC AREA OF THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN ITS CERTIFICATE OF AUGUST 12TH, 1968.

4. BY LETTER DATED SEPTEMBER 27TH, 1968, THE RESPONDENT REQUESTED THAT THE BOARD INTERPRET THE USE OF THE TERM "INTERIM MEASURE" REFERRED TO IN PARAGRAPH 5 OF ITS DECISION OF AUGUST 12TH, 1968. THE RESPONDENT FURTHER CONTENDED THAT WHILE THE BOARD REFERRED TO THE FACT THAT THE JOB SITE WAS IN STURGEON FALLS, THAT MUNICIPALITY IS NOT INCLUDED IN THE DESCRIBED BARGAINING UNIT. THE RESPONDENT ARGUES THAT SINCE STURGEON FALLS IS AN INCORPORATED MUNICIPALITY AND NOT PART OF ANY TOWNSHIP, IT IS NOT COVERED BY THE BOARD'S CERTIFICATE OF AUGUST 12TH, 1968.

5. THE TERM "INTERIM MEASURE" IS USED BY THE CONSTRUCTION INDUSTRY DIVISION OF THE BOARD WHEN IT HAS NOT DETERMINED AN ESTABLISHED GEOGRAPHIC AREA. ALL OF THE ESTABLISHED GEOGRAPHIC AREAS ARE SET OUT ON THE "GREEN MAP" ENTITLED "GEOGRAPHIC AREAS SET BY THE ONTARIO LABOUR RELATIONS BOARD CONSTRUCTION INDUSTRY DIVISION IN CERTIFICATION CASES" REVISED IN JUNE OF 1968.

6. AS WAS POINTED OUT BY THE REGISTRAR IN HIS LETTER OF SEPTEMBER 10TH, 1968, "N.B.2" READS "TOWNSHIPS REFER TO AREAS ONLY AND INCLUDE ANY MUNICIPALITIES THEREIN". BY ANALOGY THIS APPLIES ALSO TO GEOGRAPHIC AREAS FOR WHICH CERTIFICATES ARE ISSUED AS AN "INTERIM MEASURE".

7. ACCORDINGLY, FOR PURPOSES OF CLARITY, THE BOARD AMENDS ITS DECISION OF AUGUST 12TH, 1968 BY THE ADDITION OF THE FOLLOWING PARAGRAPH:

5(A). FOR PURPOSES OF CLARITY THE BOARD DECLARES THAT STURGEON FALLS IS INCLUDED IN THE BARGAINING UNIT FOUND TO BE APPROPRIATE IN PARAGRAPH 5.

14941-68-R: UNITED RUBBER, CORK, LINOLEUM, PLASTIC WORKERS OF AMERICA (APPLICANT) v. CANADIAN GENERAL-TOWER LIMITED (RESPONDENT) v. THE CANADIAN RESIN WORKERS' UNION DIVISION 1 (NCCL) (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS F.W. MURRAY AND P. J. O'KEEFE.

APPEARANCES AT THE HEARING: J. OSLER Q.C., AND LEONARD COLLINS FOR THE APPLICANT, R. D. PERKINS, R. B. STATTON, A. M. ADAMSON AND W. R. ATKINSON FOR THE RESPONDENT, ROBIN B. CUMINE AND ALWYN DAVIES FOR THE INTERVENER.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFE:
OCTOBER 21, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE APPLICANT REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN. THE TERM-INAL DATE FIXED FOR THIS APPLICATION WAS AUGUST 16TH, 1968.

2. PURSUANT TO HIS APPOINTMENT, AN EXAMINER CONVENED A PRE-HEARING VOTE MEETING OF THE PARTIES ON AUGUST 22ND, 1968.

3. ON AUGUST 23RD, 1968, THE APPLICANT FILED FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, AND ADVISED THAT IT WAS FILED LATE THROUGH INADVERTENCE. THE APPLICANT BY ITS LETTER OF AUGUST 23RD, 1968 REQUESTED THE BOARD TO EXTEND THE TIME FOR FILING FORM 8 UNTIL AUGUST 23RD. THE APPLICANT ALLEGED THAT NO ONE WOULD BE PREJUDICED BY THE LATE FILING SINCE "THE FORM COVERS ONLY THE DOCUMENTARY EVIDENCE SUBMITTED WITH THE APPLICATION AND THERE CAN BE NO QUESTION OF THE APPLICANT ATTEMPTING IN ANY UNFAIR WAY TO IMPROVE ITS POSITION BY FILING THIS FORM." SECTION 6 OF THE BOARD'S RULES OF PROCEDURE READS AS FOLLOWS:

6. THE APPLICANT SHALL, NOT LATER THAN THE SECOND DAY AFTER THE TERMINAL DATE FOR THE APPLICATION, FILE A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IN FORM 8.

4. FORM 8 SHOULD HAVE BEEN FILED BY THE APPLICANT ON OR BEFORE AUGUST 18TH, 1968 IF THE APPLICANT COMPLIED WITH THE PROVISIONS OF SECTION 6 OF THE BOARD'S RULES OF PROCEDURE. HOWEVER, FORM 8 WAS BEFORE THE BOARD WHEN THE BOARD CONSIDERED THE EVIDENCE CONTAINED IN THE EXAMINER'S PRE-HEARING VOTE MEETING ON SEPTEMBER 4TH, 1968.

5. THE BOARD IN ITS DECISION OF SEPTEMBER 4TH, 1968 STATED AS FOLLOWS:

1. THE APPLICANT HAS REQUESTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN IN THIS MATTER. HOWEVER, THE APPLICANT FAILED TO FILE FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, UNTIL AUGUST 23RD, 1968, THE DATE FOLLOWING THE PRE-HEARING VOTE MEETING IN THIS MATTER. SINCE THE APPLICANT'S DECLARATION CONCERNING MEMBER DOCUMENTS WAS NOT AVAILABLE AT THE PRE-HEARING VOTE MEETING SO THAT THE INFORMATION CONTAINED THEREIN COULD BE GIVEN TO THE PARTIES, THE APPLICANT'S REQUEST FOR A PRE-HEARING REPRESENTATION VOTE TO BE TAKEN IN THIS MATTER IS REFUSED.

2. THE BOARD DIRECTS THE REGISTRAR TO FIX A NEW TERMINAL DATE FOR THE APPLICATION AND TO EFFECT THE SERVICES PROVIDED FOR IN ACCORDANCE WITH THE PROVISIONS OF SECTION 5 OF THE BOARD'S RULES OF PROCEDURE.

6. IN ACCORDANCE WITH THE BOARD'S DIRECTION, THE REGISTRAR FIXED SEPTEMBER 11TH, 1968 AS THE NEW TERMINAL DATE IN THIS MATTER.

7. THE APPLICANT FILED A NEW COPY OF FORM 8 ON SEPTEMBER 11TH WHICH WAS IN THE SAME FORM AS THE DECLARATION FILED BY THE APPLICANT

ON AUGUST 23RD. NO ADDITIONAL EVIDENCE OF MEMBERSHIP WAS FILED SUBSEQUENT TO THE DATE THIS APPLICATION WAS MADE AND NO STATEMENT OF OBJECTIONS IN OPPOSITION TO THIS APPLICATION HAS BEEN RECEIVED BY THE BOARD.

8. THE RESPONDENT BY ITS LETTER DATED SEPTEMBER 11TH, 1968 OBJECTED TO THE BOARD'S DECISION OF SEPTEMBER 4TH, 1968 AS FOLLOWS:

- THIS IS TO ADVISE THE BOARD THAT THE RESPONDENT TAKES THE POSITION THAT THE APPLICANT'S FAILURE TO FILE FORM #8 IN ACCORDANCE WITH THE PROVISIONS OF SECTION 6 OF THE RULES OF PROCEDURE AND REGULATIONS IS A FUNDAMENTAL DEFECT IN THE APPLICATION AND NOT ONE WHICH GOES MERELY TO THE QUESTION OF THE APPLICANT'S RIGHT TO A PRE-HEARING VOTE. ACCORDINGLY, WE REQUEST THAT THE BOARD RECONSIDER ITS DECISION. WE SUBMIT THAT THE APPLICATION SHOULD BE DISMISSED.

THE RESPONDENT WAS ADVISED THAT ITS OBJECTION WOULD BE DEALT WITH BY THE BOARD AT THE HEARING IN THIS MATTER.

9. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD IS SATISFIED THAT THE LATE FILING OF FORM 8 ON AUGUST 23RD, 1968 WAS CAUSED BY OVERSIGHT ON THE PART OF ONE OF THE APPLICANT'S OFFICIALS. THE LATE FILING WAS NOT DESIGNED TO, NOR DID IT IN ANY WAY, PREJUDICE THE RIGHTS OF THE PARTIES IN THESE PROCEEDINGS.

10. IN APPLICATIONS FOR CERTIFICATION WHERE NO PRE-HEARING REPRESENTATION VOTE IS REQUESTED, IT HAS BEEN THE BOARD'S USUAL PRACTICE, PURSUANT TO SECTION 57(2) OF THE BOARD'S RULES OF PROCEDURE, TO ENLARGE THE TIME FOR FILING FORM 8 UP TO THE DATE OF THE HEARING. SIMILARLY, THE BOARD HAS PERMITTED LATE FILING OF FORM 9, REPLY TO APPLICATION FOR CERTIFICATION, AND FORM 11, INTERVENTION.

11. THE FACT THAT THE APPLICANT IN THIS MATTER HAS REQUESTED A PRE-HEARING REPRESENTATION VOTE AND ASKED LEAVE TO FILE FORM 8 AFTER THE TIME PRESCRIBED BY SECTION 6 OF THE BOARD'S RULES BUT BEFORE THE BOARD CONSIDERED THE EVIDENCE IN THIS CASE AND BEFORE ANY DECISION WAS MADE, HAS NOT, IN OUR VIEW, MATERIALLY ALTERED THE CONDITIONS SO THAT THE BOARD SHOULD REFUSE TO ENLARGE THE TIME FOR FILING FORM 8 IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE.

12. THE BOARD STRICTLY ENFORCES THE PROVISIONS OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE WHICH PROVIDE FOR THE FILING, NOT LATER THAN THE TERMINAL DATE, OF MEMBERSHIP EVIDENCE IN A TRADE UNION OR OF OBJECTION BY EMPLOYEES TO CERTIFICATION OR OF

SIGNIFICATION BY EMPLOYEES THAT THEY NO LONGER WISH TO BE REPRESENTED BY A TRADE UNION. HOWEVER, FORM 8, DECLARATION CONCERNING MEMBERSHIP DOCUMENTS, IS NOT, OF ITSELF, MEMBERSHIP EVIDENCE BUT, ALTHOUGH IN WRITTEN FORM, IS EVIDENCE WHICH IDENTIFIES AND SUBSTANTIATES THE EVIDENCE OF MEMBERSHIP AS CONTEMPLATED BY SECTION 48(2) OF THE BOARD'S RULES OF PROCEDURE.

13. SINCE FORM 8 ONLY IDENTIFIES AND SUBSTANTIATES THE DOCUMENTARY EVIDENCE OF MEMBERSHIP WHICH HAS BEEN PREVIOUSLY FILED, THIS TYPE OF EVIDENCE IS ACCEPTABLE AT THE HEARING OF AN APPLICATION PURSUANT TO THE PROVISIONS OF SECTION 48(2)

14. THE BOARD'S RULES OF PROCEDURE ARE NOT DESIGNED AS OBSTACLES PLACED IN THE PATH OF PARTIES TO A PROCEEDING, BUT ARE INTENDED TO PERMIT THE BOARD TO ADMINISTER THE LABOUR RELATIONS ACT IN A MANNER WHEREBY ONE PARTY WILL NOT BE ABLE TO UNFAIRLY GAIN A PROCEDURAL ADVANTAGE OVER THE OTHER TO THE PREJUDICE OF THE OTHER PARTY. THE BOARD'S PRIMARY FUNCTION IN AN APPLICATION FOR CERTIFICATION IS TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES IN THE BARGAINING UNIT IN THE EXERCISE OF THEIR RIGHT TO CHOOSE A BARGAINING AGENT. THIS FUNCTION IS NOT PROPERLY EXERCISED IF THE BOARD REFUSES TO MAKE THE DETERMINATION OF THE EMPLOYEES' WISHES BECAUSE OF SOME TECHNICAL IRREGULARITY WHICH IN NO WAY CREATES AN UNFAIR ADVANTAGE PREJUDICIAL TO THE RIGHTS OF A PARTY OR PREVENTS THE BOARD FROM PROPERLY ASSESSING THE EVIDENCE.

15. ON THE FACTS OF THIS CASE, WE FIND THAT THE APPLICANT HAS NOT GAINED AN ADVANTAGE BUT ON THE CONTRARY MAY HAVE SUFFERED A DISADVANTAGE AS A RESULT OF THE DELAY IN TAKING THE VOTE. THERE IS NO EVIDENCE THAT EITHER OF THE PARTIES HAS SUFFERED ANY PREJUDICE IN THESE PROCEEDINGS AS A RESULT OF THE LATE FILING OF FORM 8.

16. WHILE THE BOARD MIGHT HAVE DIRECTED THE TAKING OF THE PRE-HEARING REPRESENTATION VOTE, SEALED THE BALLOT BOX AND LISTED THIS MATTER FOR HEARING AFTER THE VOTE WAS TAKEN IN ORDER TO PROVIDE THE APPLICANT WITH AN OPPORTUNITY TO SHOW CAUSE WHY THE BOARD SHOULD ENLARGE THE TIME FOR FILING FORM 8, THE FACT THAT IT FOLLOWED THE PROCEDURE ADOPTED IN ITS DECISION OF SEPTEMBER 4TH, 1968 HAS IN NO WAY PREJUDICED THE RESPONDENT AND THE INTERVENER OR ENHANCED THE APPLICANT'S POSITION.

17. SINCE THE BOARD IS NOW PREPARED TO ENLARGE THE TIME FOR FILING FORM 8 IN THE CIRCUMSTANCES OF THIS CASE, A REPRESENTATION VOTE WILL BE DIRECTED AND IT BECOMES ACADEMIC WHETHER THE BOARD ACCEPTS THE ORIGINAL FORM 8 FILED OR THE TIMELY FORM 8 WHICH WAS FILED ON THE NEW TERMINAL DATE. ACCORDINGLY, THERE IS NO CAUSE TO VARY THE BOARD'S DECISION OF SEPTEMBER 4TH, 1968 IN THIS MATTER.

18. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

19. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY, OFFICE AND CLERICAL STAFF, SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 104, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

20. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT LABORATORY STAFF INCLUDING TECHNICIANS AND LABORATORY ASSISTANTS, QUALITY CONTROL TECHNICIANS, ELECTRONIC TECHNICIANS AND FIRST AID ATTENDANTS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND THAT DRAFTSMEN ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE AND CLERICAL STAFF.

21. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 11TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

22. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

23. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

24. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER F. W. MURRAY:

OCTOBER 21, 1968.

1. I DISSENT.

2. I AM OF THE OPINION THAT THE FAILURE TO FILE FORM 8 IN ACCORDANCE WITH SECTION 6 OF THE BOARD'S RULES OF PROCEDURE REPRESENTS A SUBSTANTIVE AND FUNDAMENTAL DEFECT IN THE APPLICATION AND NOT ONE WHICH GOES MERELY TO THE QUESTION OF THE APPLICANT'S RIGHT TO A PRE-HEARING VOTE.

3. IN COMPLETING FORM 8 THE SIGNATOR TO THE DOCUMENT VERIFIES, AND MAY QUALIFY, INTER ALIA, THAT THE PERSONS WHOSE NAMES APPEAR ON THE RECEIPTS OR OTHER ACKNOWLEDGMENTS OF PAYMENT ON ACCOUNT OF DUES OR INITIATION FEES ARE THE PERSONS WHO ACTUALLY COLLECT THE MONIES, PAY THE ACCOUNTED DUES OR INTIATION FEES, AND THAT EACH MEMBER ON WHOSE BEHALF A RECEIPT OR AN ACKNOWLEDGMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID THE AMOUNT SHOWN THEREON ON HIS OWN BEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGMENT OF PAYMENT AS THE COLLECTOR.

4. I DO NOT AGREE WITH MY COLLEAGUES' OPINION THAT FORM 8 MERELY IDENTIFIES AND SUBSTANTIATES THE MEMBERSHIP EVIDENCE AS DEALT WITH IN PARAGRAPHS 12 AND 13 OF THE DECISION. FORM 8, IN MY OPINION, CLEARLY VERIFIES THE MEMBERSHIP EVIDENCE AND MAY QUALIFY THE PAYMENT OF MONEY, (E.G. WHERE A PARENT OR GUARDIAN HAS PAID THE MONEY ON BEHALF OF AN ALLEGED MEMBER). SUCH QUALIFYING CIRCUMSTANCES ARE TO BE DECLARED IN SUBSECTION 3 OF FORM 8. ACCORDINGLY, THE INFORMATION CONTAINED IN FORM 8, MAY, SUBJECT TO INVESTIGATION BY THE BOARD, AFFECT THE SUCCESS OR FAILURE OF AN APPLICANT TO MEET THE BOARD'S REQUIREMENTS FOR EITHER CERTIFICATION, A VOTE, OR AS IN THE CASE BEFORE THE BOARD - A PRE-HEARING VOTE.

5. THE BOARD IN THE NATIONAL STEEL CAR CASE, BOARD FILE 10905-65-R, WOULD NOT PERMIT THE COUNTING OF BALLOTS TAKEN AS A RESULT OF A REQUEST FOR A PRE-HEARING VOTE BECAUSE THE EVIDENCE DISCLOSED THAT THE OFFICERS OF THE APPLICANT, WHO ARE DIRECTLY RESPONSIBLE FOR THE ORGANIZATIONAL CAMPAIGN, DID NOT TAKE THE NECESSARY STEPS TO ENSURE THAT THE INFORMATION CONTAINED IN THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS BEFORE THE ONTARIO LABOUR RELATIONS BOARD, (THEN FORM 9 AND NOW FORM 8), OF THE BOARD'S RULES OF PROCEDURE WERE TRUE AND ACCURATE.

6. IN THIS CASE CITED, IT WAS FOUND THAT THE PERSONS WHO HAD MADE THE DECLARATION HAD ACTED IN GOOD FAITH AND WERE NOT GUILTY OF A CONSCIOUS ATTEMPT TO MISLEAD THE BOARD. IT WAS FOUND THAT OTHER OFFICERS OF THE APPLICANT HAD EXHIBITED A LACK OF CARE IN CHECKING THE ACCURACY OF THE INFORMATION CONTAINED IN THE EVIDENCE OF MEMBERSHIP AND THAT THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IN EFFECT WAS IN ITSELF CARELESSLY PREPARED. IT SHOULD BE NOTED THAT THE BOARD DID NOT FIND THAT THE MEMBERSHIP EVIDENCE (I.E. SIGNED MEMBERSHIP CARDS AND COUNTERSIGNED RECEIPTS) WAS INACCURATE, INSTEAD THE BOARD FOUND THAT THE VERIFICATION OF THIS EVIDENCE WAS LACKING AND THAT THE STATEMENTS MADE IN THE DECLARATION COULD NOT BE RELIED UPON.

7. THE BOARD IN ITS DECISION OF JANUARY 26TH, 1966, CLEARLY LINKED THE DECLARATION, THEN FORM 9, AS PART OF THE MINIMUM STANDARD OF PROOF REQUIRED BY THE BOARD, AND ON THIS POINT SAID:

SINCE THE DOCUMENTS TENDERED AS EVIDENCE OF MEMBERSHIP ARE NOT SUPPORTED BY A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS BECAUSE OF THE FAILURE OF THE APPLICANT'S OFFICIALS TO MAKE THE NECESSARY INQUIRIES, AND SINCE THE ABSENCE OF A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS GOES TO THE VERY ROOT OF THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT, THE BOARD IS CONSTRAINED TO FIND THAT THE MEMBERSHIP DOCUMENTS CANNOT BE ACCEPTED AS CONTAINING RELIABLE INFORMATION WHICH COULD MEET EVEN THE MINIMUM STANDARDS OF PROOF REQUIRED BY THE BOARD. (SEE ESSEX WIRE CORPORATION LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER, 1965, P. 490). THIS APPLICATION MUST ACCORDINGLY FAIL.

8. BECAUSE THE EVIDENCE REVEALED THAT THE DECLARATION EXHIBITED CARELESSNESS AS TO VERIFICATION OF MEMBERSHIP, THE BOARD DISMISSED THE APPLICATION AND DECLINED TO COUNT THE BALLOTS CAST AT THE PRE-HEARING VOTE WHICH HAD ALREADY BEEN CONDUCTED.

9. IN THE DECISION OF APRIL 5TH, 1966, ON THE SAME MATTER, AND AS A RESULT OF A REQUEST INTER ALIA TO ADDUCE ADDITIONAL EVIDENCE BEARING ON THE MATTERS, THE BOARD DESCRIBED THE LACK OF A RELIABLE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS AS "A MATERIAL DEFECT IN THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT," SEE PARAGRAPH 15.

10. THE FILING OF A DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IS THEREFORE IN MY OPINION, AN ESSENTIAL INGREDIENT TO AN APPLICATION FOR CERTIFICATION AND JUST AS ESSENTIAL AS THE FILING OF ACTUAL MEMBERSHIP CARDS AND COUNTERSIGNED RECEIPTS. THIS EVIDENCE MUST BE TREATED TOGETHER AND AS A WHOLE, AND THE BOARD SHOULD NOT TOLERATE CARELESSNESS EITHER IN THE PREPARATION OF THE DECLARATION OR IN THE FILING OF THE DOCUMENTS IN ACCORDANCE WITH THE BOARD'S RULES OF PROCEDURE.

11. IN THE CASE NOW BEFORE THE BOARD, THE APPLICANT FILED THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS (FORM 8) ON AUGUST 23RD, 1968, SEVEN DAYS AFTER THE TERMINAL DATE (AUGUST 16TH, 1968) OR FIVE DAYS AFTER THE DATE REQUIRED FOR FILING UNDER SECTION 6 OF THE BOARD'S RULES OF PROCEDURE.

12. I AM OF THE OPINION THAT THE BOARD HAS NO AUTHORITY TO ALTER SECTION 6 OF THE BOARD'S RULES OF PROCEDURE OR TO EXTEND AND ENLARGE THE DATE FOR THE RECEIPT OF THE DECLARATION, EXCEPT WHERE IT HAS NOT BEEN RECEIVED BY THE BOARD THROUGH NO FAULT OF THE APPLICANT. THIS PRINCIPLE IS CLEARLY ESTABLISHED IN THE ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1968, P. 1186. IN THIS CASE A GROUP OF EMPLOYEES WAS DENIED THE RIGHT TO FILE A PETITION WHICH WAS NOT FILED IN

ACCORDANCE WITH SECTION 48 AND SECTION 50 OF THE BOARD'S RULES OF PROCEDURE. THE EVIDENCE DISCLOSED THAT AN EMPLOYEE OF THE INTERVENER'S LEGAL FIRM MAILED THE PETITION ONE DAY AFTER THE TERMINAL DATE, ALTHOUGH IT WOULD APPEAR THAT THE BOARD ACTUALLY RECEIVED THE REGISTERED LETTER ON THE SAME DAY ON WHICH IT WOULD HAVE BEEN RECEIVED HAD THE EMPLOYEE MAILED IT ON THE TERMINAL DATE. THE BOARD FOUND THAT THIS BREACH OF SECTION 48 AND SECTION 50 OF THE BOARD'S RULES OF PROCEDURE COULD NOT BE TOLERATED AND DENIED THE EMPLOYEES THE OPPORTUNITY OF FILING THEIR PETITION.

13. IT WOULD APPEAR THAT THE BOARD IS UNWILLING TO PERMIT A BREACH OF SECTIONS 48 AND 50 OF THE BOARD'S RULES OF PROCEDURE RESPECTING THE FILING OF DOCUMENTS CONCERNING EVIDENCE AFFECTING THE PARTICULAR WISHES OF EMPLOYEES, BUT, AS IN THE CASE NOW BEFORE THE BOARD, THE BOARD IS WILLING TO PERMIT A BREACH OF SECTION 6 OF THE BOARD'S RULES OF PROCEDURE WITH RESPECT TO THE FILING OF DOCUMENTS CONCERNING EVIDENCE OF MEMBERSHIP AFFECTING AN APPLICANT TRADE UNION.

14. I AM OF THE OPINION THAT SUCH INCONSISTENCIES WILL ONLY SERVE TO PLACE DECISIONS OF THE BOARD IN DISREPUTE.

15. I WOULD FIND THAT THE FAILURE TO FILE FORM 8 IN COMPLIANCE WITH SECTION 6 OF THE BOARD'S RULES OF PROCEDURE IS A SUBSTANTIVE AND FUNDAMENTAL DEFECT IN THE APPLICATION AND REPRESENTS AN UN-ACCEPTABLE BREACH OF THIS SECTION OF THE BOARD'S RULES OF PROCEDURE AND I WOULD THEREFORE HAVE DISMISSED THE APPLICATION.

15005-68-R: OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION
(APPLICANT) V. DOMTAR CHEMICALS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H. F. IRWIN.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
O. HODGES: OCTOBER 28, 1968.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED OCTOBER 2ND, 1968, IN THIS MATTER.

2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT BEACHVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. HAVING REGARD TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, THE BOARD FINDS THAT ALBERT BONIFACE, A PERSON CLASSIFIED AS STOCKROOM CLERK, AND BRYAN HUTCHESON, A PERSON CLASSIFIED AS ASSISTANT STOCKROOM CLERK, ARE ENGAGED IN THE PERFORMANCE OF FUNCTIONS WHICH SERVICE THE PRODUCTION EMPLOYEES FOR WHOM THE APPLICANT IS THE BARGAINING AGENT. WHILE MESSRS. BONIFACE AND HUTCHESON ARE UNDER THE SUPERVISION OF THE OFFICE MANAGER, THEY ARE PHYSICALLY LOCATED ADJACENT TO THE PRODUCTION WORKERS SOME 200 YARDS FROM THE OFFICE EMPLOYEES. AGAIN, WHILE MESSRS. BONIFACE AND HUTCHESON HAVE SOME OF THE SAME BENEFITS ENJOYED BY THE OFFICE WORKERS THEIR COMMUNITY OF INTEREST LIES WITH THE PRODUCTION WORKERS SINCE THEY ARE DAILY ASSOCIATED WITH THEM IN THE PERFORMANCE OF THEIR DUTIES AND THEIR DUTIES ARE PERFORMED AS A SERVICE TO THE PRODUCTION EMPLOYEES. FOR THESE REASONS, THE BOARD FINDS THAT EVEN THOUGH THEIR INTERESTS ARE NOT ENTIRELY DIVORCED FROM THE OFFICE EMPLOYEES THEIR MAIN COMMUNITY OF INTEREST LIES WITH THE PRODUCTION EMPLOYEES AND ACCORDINGLY THEY FORM A TAG END TO THE PRODUCTION UNIT AND WOULD NOT BE APPROPRIATE FOR INCLUSION IN A UNIT OF OFFICE EMPLOYEES. IN ADDITION TO THE ABOVE, IT IS TO BE NOTED THAT MR. HUTCHESON, WHILE ACTING AS ASSISTANT STOCKROOM CLERK, ALSO DRIVES A SMALL TRUCK ON LOCAL PICK-UPS.

5. THE BOARD FURTHER FINDS THAT STANLEY MACMILLAN AND GEORGE MITCHELL, PERSONS CLASSIFIED BY THE RESPONDENT AS SCALEMEN, ARE EMPLOYED TO WEIGH TRUCKS AND MAKE OUT SCALE TICKETS. FOR REASONS SIMILAR TO THE REASONS SET OUT WITH RESPECT TO MESSRS. BONIFACE AND HUTCHESON, THESE EMPLOYEES ARE ELIGIBLE FOR INCLUSION IN THE BARGAINING UNIT AND DO NOT SHARE A COMMUNITY OF INTEREST WITH OFFICE EMPLOYEES SUFFICIENT TO CAUSE THEM TO BE INCLUDED IN THE OFFICE UNIT.

6. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 3RD, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

7. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

8. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

9. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER H. F. IRWIN:

OCTOBER 28, 1968.

1. I DISSENT.

2. THIS IS AN APPLICATION FOR CERTIFICATION FOR WHAT THE APPLICANT UNION CONTENDS IS A TAG END BARGAINING UNIT OF FOUR EMPLOYEES NOT BOUND BY THE SUBSISTING COLLECTIVE AGREEMENT ENTERED INTO BETWEEN THE APPLICANT AND THE RESPONDENT COMPANY AS OF JULY 13, 1966. THE RESPONDENT CONTENDS THAT THESE FOUR PERSONS ARE OFFICE EMPLOYEES AND THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS INAPPROPRIATE FOR COLLECTIVE BARGAINING. THESE FOUR EMPLOYEES ARE:

ALBERT BONIFACE	-	STOCKROOM CLERK
BRYAN HUTCHESON	-	ASSISTANT STOCKROOM CLERK
STANLEY MACMILLAN	-	SCALEMAN
GEORGE MITCHELL	-	SCALEMAN

3. PARAGRAPH 2.01 OF THE SAID COLLECTIVE AGREEMENT DEFINES THE BARGAINING UNIT AS FOLLOWS:

2.01 THE COMPANY AGREES TO RECOGNIZE THE UNION AS THE EXCLUSIVE COLLECTIVE BARGAINING AGENT IN RESPECT TO ALL MATTERS ARISING UNDER THE PROVISIONS OF THIS AGREEMENT FOR ALL THE COMPANY'S EMPLOYEES AT ITS BEACHVILLE PLANT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMEN, OFFICE STAFF AND WATCHMEN.

4. IT WAS AGREED BEFORE THE EXAMINER THAT THE FOUR EMPLOYEES IN DISPUTE DO NOT EXERCISE MANAGERIAL FUNCTIONS AND ARE NOT EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. CONSEQUENTLY, THESE PERSONS CANNOT BE CLASSIFIED AS FOREMEN OR ABOVE THE RANK OF FOREMAN. IT IS CLEAR FROM THEIR OCCUPATIONAL CLASSIFICATIONS THAT THEY ARE NOT CLASSIFIED AS WATCHMEN.

5. THE ONLY OTHER OCCUPATIONAL GROUP OF EMPLOYEES EXCLUDED FROM THE BARGAINING UNIT AS SET OUT IN THE RECOGNITION CLAUSE OF THE COLLECTIVE AGREEMENT IS OFFICE STAFF. AS IT IS AGREED BY THE PARTIES THAT THESE FOUR PERSONS ARE NOT BOUND BY THE COLLECTIVE AGREEMENT AND THAT THEY ARE NEITHER SUPERVISORY PERSONNEL NOR WATCHMEN, I MUST CONCLUDE THAT THEY WERE AGREED TO BE CLASSIFIED AS OFFICE STAFF AT THE TIME THE COLLECTIVE AGREEMENT WAS ENTERED INTO.

AS THERE IS NO EVIDENCE OF ANY CHANGE IN THEIR DUTIES AND RESPONSIBILITIES SINCE THAT TIME, THE UNION IS ESTOPPED FROM CLAIMING THEM TO BE A TAG END UNIT AT THE PRESENT TIME.

6. APART FROM THE ABOVE, THE REPORT OF THE EXAMINER IS CLEAR THAT THEIR DUTIES ARE MOSTLY CLERICAL IN NATURE. THEY WORK UNDER THE DIRECTION AND SUPERVISION OF MR. C. RING, OFFICE MANAGER. THEY ARE NOT RESPONSIBLE TO THE PLANT MANAGER OR ANY PLANT OFFICIAL BELOW THAT RANK. THEIR OCCUPATIONAL CLASSIFICATIONS ARE NOT INCLUDED IN THE 49 OCCUPATIONAL CLASSIFICATIONS LISTED IN APPENDIX "A" OF THE COLLECTIVE AGREEMENT CONSEQUENTLY, THEY ARE NOT BOUND BY THE COLLECTIVE AGREEMENT AND THE ONLY EXCLUSION THEY FIT INTO IS OFFICE STAFF.

7. AS TO WORKING CONDITIONS, THESE FOUR EMPLOYEES ARE PAID A SALARY WHILE ALL PLANT EMPLOYEES ARE PAID AT SPECIFIED HOURLY RATES. THEY DO NOT PUNCH A TIME CLOCK AS DO PLANT EMPLOYEES. THEY ARE NOT DOCKED FOR TIME OFF FROM WORK AS ARE PLANT EMPLOYEES. THEY WORK OFFICE HOURS, WITH CERTAIN VARIATIONS, BUT NOT PLANT HOURS. THEY RECEIVE THE SAME VACATION SCHEDULE AS OFFICE STAFF. THEY OBSERVE THE SAME PUBLIC HOLIDAYS AS THE OFFICE STAFF EVEN THOUGH THE PLANT MAY BE OPERATING ON THE HOLIDAY. THEY PARTICIPATE IN THE SAME MEDICAL INSURANCE PLAN AS THE OFFICE STAFF. SURELY THIS IS CONCLUSIVE EVIDENCE THAT THESE FOUR EMPLOYEES HAVE BEEN RECOGNIZED AS OFFICE PERSONNEL AND NOT PLANT EMPLOYEES.

8. FOR ALL THESE REASONS, I WOULD HAVE FOUND THAT THESE FOUR EMPLOYEES ARE OFFICE PERSONNEL AND THAT THE TAG END UNIT APPLIED FOR IS INAPPROPRIATE FOR COLLECTIVE BARGAINING AND I WOULD HAVE DISMISSED THE APPLICATION.

15047-68-R: INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS (APPLICANT) V. CANADIAN GYPSUM COMPANY LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: IAN SCOTT, GLENN PATTINSON, AND
H. A. HADDAWAY FOR THE APPLICANT, AND H. D. STEEVES,
J. A. SHAKESPEARE, AND THOMAS G. HEINTZMAN FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 21, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION MADE THE 5TH DAY OF SEPTEMBER, 1968. THE TERMINAL DATE WAS SEPTEMBER 13TH, 1968.

2. THE NOTICE OF APPLICATION FOR CERTIFICATION POSTED IN THIS MATTER CONTAINED, AS IS CUSTOMARY, A DESCRIPTION OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT. THE DESCRIPTION PROPOSED THE EXCLUSION OF STATIONARY ENGINEERS FROM AN ALL-EMPLOYEE UNIT. AT THE HEARING A QUESTION AROSE WITH RESPECT TO THE INCLUSION OF THE OPERATING ENGINEERS.

3. THE INTERNATIONAL UNION OF OPERATING ENGINEERS, HEREINAFTER CALLED "THE ENGINEERS", APPLIED ON SEPTEMBER 16TH, 1968, FOR CERTIFICATION AS BARGAINING AGENT FOR A CRAFT UNIT. BY LETTER DATED OCTOBER 2ND, 1968, THE BOARD ADVISED THE INTERNATIONAL UNION OF OPERATING ENGINEERS OF THE SITUATION AND INVITED IT TO MAKE REPRESENTATIONS WITH RESPECT TO THE MATTER IF IT SO DESIRED. BY LETTER DATED OCTOBER 7TH, 1968, THE INTERNATIONAL UNION OF OPERATING ENGINEERS REPLIED AS FOLLOWS:

"PLEASE BE ADVISED THAT THE ABOVE LOCAL UNION ARE OF THE OPINION THAT THE STATIONARY ENGINEERS SHOULD NOT BE INCLUDED IN THE BARGAINING UNIT REQUESTED BY THE EMPLOYER RE THE APPLICATION OF THE INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS, DUE TO THE FACT THAT IN OUR APPLICATION FOR CERTIFICATION FORWARDED TO THE BOARD, WE HAD DOCUMENTARY EVIDENCE OF MEMBERSHIP FOR THE TOTAL EMPLOYEES IN THE BARGAINING UNIT FOR WHICH WE APPLIED."

4. IT IS TO BE NOTED THAT THE APPLICATION OF THE ENGINEERS WAS NOT MADE UNTIL AFTER THE TERMINAL DATE OF THE PRESENT APPLICATION.

5. HAVING IN MIND ALL OF THE FOREGOING, THE BOARD IS NOT PERSUADED THAT IT SHOULD DEVIATE IN ANY WAY FROM ITS POLICY OF REQUIRING THE INCLUSION OF STATIONARY ENGINEERS IN AN ALL-EMPLOYEE UNIT IN CIRCUMSTANCES SIMILAR TO THOSE EXISTING IN THIS APPLICATION. THE ENGINEERS WILL THEREFORE BE INCLUDED IN THE BARGAINING UNIT FOUND BY THE BOARD TO BE APPROPRIATE.

6. MR. R. A. WOOLAND, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF PERSONS IN THE FOLLOWING CLASSIFICATIONS:

MACHINE SUPERVISOR,
CUPOLA SUPERVISOR,
WAREHOUSE SUPERVISOR,
LEAD WAREHOUSEMAN,
ELECTRICIAN - SUPERVISOR,
MECHANIC A - SUPERVISOR.

15088-68-R: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES LOCAL UNION 352 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DUGGAN FUELS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H. F. IRWIN.

APPEARANCES AT THE HEARING: JACK HURD FOR THE APPLICANT,
A. J. CLARK AND W. J. DUGGAN FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 2, 1968.

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2. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT MIDLAND AND AT TAY TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. THE RESPONDENT ARGUED THAT THIS APPLICATION WAS UNTIMELY DUE TO THE FACT THAT AT THE TIME THE APPLICATION WAS MADE THERE WERE 4 EMPLOYEES IN THE BARGAINING UNIT. THE RESPONDENT ANTICIPATED THAT AN ADDITIONAL 2 EMPLOYEES WOULD BE HIRED WITHIN APPROXIMATELY ONE MONTH FOLLOWING THE HEARING IN THIS MATTER. THE 2 ADDITIONAL EMPLOYEES WOULD BE CLASSIFIED AS DRIVERS AND WOULD BE IN ADDITION TO THE DRIVERS CURRENTLY EMPLOYED BY THE RESPONDENT. THE RESPONDENT ARGUED THAT SINCE THERE WAS A SCHEDULED BUILD-UP OF EMPLOYEES THE BOARD SHOULD POSTPONE CONSIDERATION OF THIS APPLICATION UNTIL SUCH TIME AS THE BUILD-UP IS COMPLETED.

4. IT WAS THE APPLICANT'S POSITION THAT THE EMPLOYMENT OF 2 ADDITIONAL DRIVERS WAS TYPICAL OF THE SEASONAL INCREASE EXPERIENCED IN THE FUEL OIL DELIVERY INDUSTRY. THE APPLICANT ALSO ARGUED THAT SINCE IT HAD ORGANIZED 3 OUT OF THE 4 EMPLOYEES PRESENTLY WORKING IT WAS ENTITLED TO CERTIFICATION.

5. THE BOARD FINDS THAT A MAJORITY OF THE TOTAL ANTICIPATED NUMBER OF EMPLOYEES IN THE BARGAINING UNIT WERE EMPLOYED AT THE TIME THIS APPLICATION WAS MADE AND THAT ALL CLASSIFICATIONS OF EMPLOYEES WERE EMPLOYED AT THAT TIME.

6. THEREFORE, THE BOARD FINDS THAT SINCE MORE THAN FIFTY PER CENT OF THE TOTAL ANTICIPATED NUMBER OF EMPLOYEES IN THE

BARGAINING UNIT ARE CURRENTLY EMPLOYED AND ALL CLASSIFICATIONS OF EMPLOYEES WERE EMPLOYED ON THE DATE THE APPLICATION WAS MADE, THIS IS NOT THE PROPER CASE WHICH WOULD ENTITLE THE BOARD TO APPLY ITS PRACTICE IN BUILD-UP CASES BY POSTPONING THE CONSIDERATION OF THE APPLICANT'S APPLICATION.

7. THE BOARD THEREFORE FINDS THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 23RD, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15093-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ARNOLD STEELE & ASSOCIATES LTD. (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #1450 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: E. VANDERKLOET FOR THE APPLICANT, W.I.C. BINNIE AND C.R. GRAHAM FOR THE RESPONDENT, A. LALONDE AND D. URQUHART FOR THE INTERVENER.

DECISION OF THE BOARD: OCTOBER 2, 1968.

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3. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL CARPENTERS AND LABOURERS IN BOARD GEOGRAPHIC AREA #10 AND #11, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

4. AS OF THE DATE OF THE MAKING OF THE INSTANT APPLICATION THE RESPONDENT ONLY HAD PERSONS CLASSIFIED AS LABOURERS AND CARPENTERS' HELPERS IN ITS EMPLOY IN BOARD GEOGRAPHIC AREA #10. THE BOARD ACCORDINGLY FINDS THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 23RD, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT WITH RESPECT TO PARAGRAPH 4.

7. AS OF THE DATE OF THE MAKING OF THE APPLICATION THE RESPONDENT HAD IN ITS EMPLOY IN BOARD GEOGRAPHIC AREA #11 PERSONS CLASSIFIED AS BOTH CARPENTERS, CARPENTERS' HELPERS AND LABOURERS. THE INTERVENER WAS CERTIFIED BY THIS BOARD ON OCTOBER 31ST, 1966 AS BARGAINING AGENT FOR A BARGAINING UNIT OF ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF ARNOLD STEELE GENERAL CONTRACTOR IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN. THERE WAS AGREEMENT THAT SOME TIME IN THE FIRST HALF OF 1967 THE RESPONDENT BECAME THE SUCCESSOR EMPLOYER TO ARNOLD STEELE GENERAL CONTRACTOR PURSUANT TO SECTION 47A OF THE ACT. ACCORDINGLY, THE INTERVENER CONTINUED TO HOLD THE BARGAINING RIGHTS FOR THE CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA. WHILE THERE IS EVIDENCE THAT THERE WAS SOME COMMUNICATION BETWEEN THE INTERVENER AND THE RESPONDENT, WE FIND THAT THE INTERVENER FAILED TO GIVE WRITTEN NOTICE TO THE RESPONDENT AS THE SUCCESSOR EMPLOYER OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT PURSUANT TO SUBSECTION (2) OF SECTION 47A. IN THESE CIRCUMSTANCES, THE BOARD FINDS THAT THE INSTANT APPLICATION AS IT RELATES TO THE CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA IS TIMELY UNDER SECTION 5 OF THE ACT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY SET OUT BELOW, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON SEPTEMBER 23RD, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A REPRESENTATION VOTE WILL BE TAKEN OF THE EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY CONSISTING OF:

ALL CARPENTERS AND CARPENTERS' APPRENTICES
IN THE EMPLOY OF THE RESPONDENT IN THE
COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE
AND EXCEPT NON-WORKING FOREMEN AND PERSONS
ABOVE THE RANK OF NON-WORKING FOREMAN.

10. ALL EMPLOYEES OF THE RESPONDENT IN THE VOTING CONSTITUENCY ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

11. VOTERS WILL BE GIVEN A CHOICE BETWEEN THE APPLICANT AND THE INTERVENER.

12. WE WOULD POINT OUT THAT THE LOCATIONS OF THE JOB SITES WHERE EMPLOYEES OF THE RESPONDENT WERE WORKING AS OF THE DATE OF APPLICATION WERE PETERBOROUGH, THE TOWNSHIP OF DOURO AND LINDSAY. ALL OF THESE LOCATIONS ARE WITHIN THE COUNTIES OF PETERBOROUGH AND VICTORIA. THE JOB SITES, OF COURSE, ALSO FALL WITHIN THE PRESENT BOARD GEOGRAPHIC AREA #11 WHICH, IN ADDITION TO THE COUNTIES OF PETERBOROUGH AND VICTORIA, ALSO ENCOMPASSES THE PROVISIONAL COUNTY OF HALIBURTON.

13. THE APPLICANT HAS FILED EVIDENCE OF MEMBERSHIP FOR MORE THAN FIFTY-FIVE PER CENT OF THE CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA #11 AS OF THE TERMINAL DATE. SHOULD MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE IN THE VOTING CONSTITUENCY DEFINED IN PARAGRAPH 9 BE CAST IN FAVOUR OF THE APPLICANT, THE APPLICANT WOULD BE ENTITLED TO CERTIFICATION FOR A UNIT COMPOSED OF ALL CONSTRUCTION LABOURERS AND CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA #11. IF, ON THE OTHER HAND, MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE IN THE VOTING CONSTITUENCY WERE CAST IN FAVOUR OF THE INTERVENER, THE INTERVENER WOULD CONTINUE TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES IN THE BARGAINING UNIT AS DESCRIBED IN THE BOARD'S CERTIFICATE OF OCTOBER 31ST, 1966 NAMELY ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE COUNTIES OF PETERBOROUGH AND VICTORIA. IN THAT EVENT, THE APPLICANT WOULD STILL BE ENTITLED TO CERTIFICATION FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN BOARD GEOGRAPHIC AREA #11.

14. THE MATTER IS REFERRED TO THE REGISTRAR.

15131-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA,
LOCAL 498 (APPLICANT) V. DIETRICH & KOEHLER CONSTRUCTION LIMITED
(RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

DECISION OF THE BOARD: OCTOBER 2, 1968.

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2. THE EVIDENCE OF MEMBERSHIP FILED IN THIS CASE CONSISTED OF TWO CERTIFICATES OF MEMBERSHIP AND ONE COMBINATION APPLICATION FOR MEMBER SHIP AND RECEIPT. THE CERTIFICATES OF MEMBERSHIP CERTIFY THAT THE PERSONS NAMED HEREIN ARE MEMBERS OF LOCAL UNION 1940. WHILE THE CERTIFICATES STATE THAT THE PERSONS ARE WILLING TO HAVE THE APPLICANT (LOCAL 498) REPRESENT THEM, THERE IS NO EVIDENCE BEFORE THE BOARD INDICATING THAT THE TWO PERSONS CONCERNED ARE MEMBERS OF THE APPLICANT. THE BOARD HAS CONSISTENTLY HELD THAT MEMBERSHIP IN ONE LOCAL IS NOT MEMBERSHIP IN ANOTHER LOCAL OF THE SAME PARENT ORGANIZATION.

3. THE APPLICANT ALLEGES THAT THERE ARE THREE PERSONS EMPLOYED BY THE RESPONDENT. THE RESPONDENT IN ITS REPLY ALLEGES THAT THERE ARE SIX EMPLOYEES. EVEN IF WE WERE TO ACCEPT THE APPLICANT'S POSITION, IT WOULD HAVE AS A MEMBER ONLY ONE PERSON OUT OF A BARGAINING UNIT OF THREE. HAVING REGARD THEN TO THE PROVISIONS OF SECTION 7 OF THE LABOUR RELATIONS ACT, THE APPLICATION IS DISMISSED.

15136-68-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA, LOCAL 905 (APPLICANT) V. PARKER BROTHERS GAMES LIMITED (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: TOM CORRIGAN FOR THE APPLICANT, A.T. VERNON AND J.C. RUTLEDGE FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 28, 1968.

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3. AT THE HEARING THE BOARD WAS ADVISED THAT THE RESPONDENT CARRIES ON BUSINESS AS A MANUFACTURER OF GAMES. ON THE DATE OF

THE APPLICATION THE RESPONDENT WAS IN THE PROCESS OF MOVING ITS BUSINESS FROM THE MUNICIPALITY OF METROPOLITAN TORONTO TO ITS NEW PLANT IN VAUGHAN TOWNSHIP. THE RESPONDENT ANTICIPATES THAT ITS MOVE TO THE NEW PLANT WILL BE COMPLETED BETWEEN CHRISTMAS AND NEW YEARS IN 1968, AT WHICH TIME IT WILL TERMINATE ITS LEASE AND CEASE ITS OPERATIONS IN METROPOLITAN TORONTO. NOTWITHSTANDING THAT THE RESPONDENT IS PRESENTLY OPERATING ITS BUSINESS IN BOTH LOCATIONS, IT IS CONCEDED THAT THERE IS A SINGLE OPERATION, WITH EMPLOYEES BEING INTERCHANGED, AND THAT THE PRESENT SYSTEM OF OPERATION IS TEMPORARY.

4. HAVING REGARD TO THE CIRCUMSTANCES, THE BOARD FINDS THAT ALL OF THE EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO AND VAUGHAN TOWNSHIP PLANTS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 1ST, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15211-68-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 67 (APPLICANT) v. MONO MECHANICAL CONTRACTING LIMITED (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: OCTOBER 22, 1968.

1. THE DOCUMENTARY EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT CONSISTS OF FOUR CERTIFICATES OF MEMBERSHIP AND FOUR DUES BOOKS. THE CERTIFICATES AND THE DUES BOOKS ARE NOT SIGNED BY THE EMPLOYEES IN RESPECT OF WHOM THEY ARE SUBMITTED. SUBSECTION 1 OF SECTION 48 OF THE BOARD'S RULES OF PROCEDURE PROVIDES IN PART THAT EVIDENCE OF MEMBERSHIP SHALL NOT BE ACCEPTED BY THE BOARD UNLESS THE EVIDENCE IS SIGNED BY THE EMPLOYEE. IN VIEW OF THESE CIRCUMSTANCES, THE BOARD CANNOT GIVE ANY WEIGHT TO THE DOCUMENTARY EVIDENCE FILED IN SUPPORT OF THIS APPLICATION.

SEE THE NICK BABIJ CASE, O.L.R.B. MONTHLY REPORT, JUNE 1961, P. 75, THE THE MOOSE HEAD HOUSE (HAMILTON) CASE, O.L.R.B. MONTHLY REPORT, NOVEMBER, 1961, P. 278.

2. IT IS ALSO NOTED THAT THE APPLICANT HAS FAILED TO FILE ANY EVIDENCE, SUCH AS A CHARTER, ESTABLISHING ITS STATUS AS A TRADE UNION.

3. IN THE RESULT THE APPLICATION IS DISMISSED.

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF
DURING OCTOBER

15079-68-R: JOHN VINK (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 1450 (RESPONDENT) V. ARNOLD STEELE GENERAL CONTRACTOR (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: G. RISHOR, J. VINK AND B. HOFTIZER FOR THE APPLICANT, A. LALONDE AND D. URQUHART FOR THE RESPONDENT, W.I.C. BINNIE AND C.R. GRAHAM FOR THE INTERVENER.

DECISION OF THE BOARD: OCTOBER 2, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT MADE PURSUANT TO SECTION 96 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT WAS CERTIFIED BY THE BOARD ON OCTOBER 31ST, 1966 FOR A BARGAINING UNIT COMPOSED OF ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE INTERVENER IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN.

3. THE EVIDENCE IS THAT THE RESPONDENT AND THE INTERVENER ENTERED INTO NEGOTIATIONS WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT. CONCILIATION SERVICES WERE APPLIED FOR AND GRANTED. ON DECEMBER 22ND, 1966 THE MINISTER ADVISED THE PARTIES THAT HE DID NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD. NO COLLECTIVE AGREEMENT HAS BEEN ENTERED INTO BY THE RESPONDENT AND THE INTERVENER.

4. THERE WAS AGREEMENT THAT SOME TIME DURING THE FIRST HALF OF 1967, ARNOLD STEELE & ASSOCIATES LTD. BECAME THE SUCCESSOR TO THE INTERVENER PURSUANT TO SECTION 47A OF THE ACT AND THAT THE FORMER EMPLOYEES OF THE INTERVENER BECAME THE EMPLOYEES OF ARNOLD STEELE & ASSOCIATES LTD. THEREFORE, AS OF THE DATE OF THE MAKING OF THE INSTANT APPLICATION THE INTERVENER HAD NO EMPLOYEES IN ITS EMPLOY. IN AN APPLICATION FOR TERMINATION OF BARGAINING RIGHTS MADE UNDER SECTION 96(1) OF THE ACT, IF A PERSON IS NOT AN EMPLOYEE IN THE BARGAINING UNIT AS OF THE DATE OF THE APPLICATION, HE IS NOT CONSIDERED TO BE AN EMPLOYEE OF THE EMPLOYER CONCERNED FOR PURPOSES OF THE APPLICATION.

5. SINCE THE INTERVENER HAD NO EMPLOYEES IN THE BARGAINING UNIT AS OF THE DATE OF THE MAKING OF THE APPLICATION, WHICH INCLUDES THE APPLICANT HIMSELF, THE APPLICANT HAD NO STATUS TO BRING THE APPLICATION (SEE UNI-FORM BUILDERS LIMITED CASE, O.L. R.B. MONTHLY REPORT, APRIL 1968, P. 60).

6. THE APPLICATION ACCORDINGLY IS DISMISSED.

15118-68-R: NORTHERN ENGINEERS & SUPPLY CO. LIMITED (APPLICANT) V. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION LOCAL 397 (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: R.D. PERKINS AND G. HOLT FOR THE APPLICANT, RONALD S. TAYLOR FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 23, 1968.

1. THE APPLICANT HAS APPLIED FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTIONS 45, 46 AND 79 OF THE LABOUR RELATIONS ACT.

2. THE FACTS OF THIS CASE ARE NOT IN DISPUTE.

3. THE RESPONDENT IN THIS MATTER WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE APPLICANT ON AUGUST 30TH, 1960. THE PARTIES BARGAINED IN GOOD FAITH WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT AND A CONCILIATION OFFICER WAS APPOINTED. ON AUGUST 1ST, 1961, THE MINISTER OF LABOUR INFORMED THE PARTIES THAT A CONCILIATION BOARD WOULD NOT BE APPOINTED. FOLLOWING THE MINISTER'S LETTER, THE RESPONDENT UNION PICKETED THE EMPLOYER'S PREMISES UNTIL APPROXIMATELY THE END OF AUGUST, 1961.

4. SINCE SEPTEMBER, 1961, THE EMPLOYER HAS CONTINUED ITS NORMAL OPERATIONS AND THERE HAS BEEN NO ATTEMPT WHATSOEVER BY THE UNION TO RESUME BARGAINING OR TO ASSERT ITS BARGAINING RIGHTS IN ANY WAY UP TO APRIL, 1968.

5. ON APRIL 11TH, 1968, THE RESPONDENT UNION WROTE TO THE APPLICANT AND REQUESTED THAT THE APPLICANT MEET WITH THE UNION AND OTHER EMPLOYERS WHO WERE ENGAGED IN THE APPLICATION OF ROOFING MATERIALS WITH A VIEW OF ENTERING JOINT NEGOTIATIONS. THE APPLICANT DID NOT ENTER INTO NEGOTIATIONS WITH THE RESPONDENT FOLLOWING THE RESPONDENT'S LETTER OF APRIL 11TH, 1968, AND ON SEPTEMBER 13TH, 1968, THE UNION NOTIFIED THE APPLICANT BY LETTER THAT IT REQUIRED THE APPLICANT TO COMMENCE BARGAINING ON OR BEFORE THURSDAY, SEPTEMBER 19TH, 1968. IN THE EVENT THAT THE APPLICANT REFUSED TO BARGAIN WITH THE RESPONDENT ON OR BEFORE SEPTEMBER 19TH, THE RESPONDENT THREATENED TO PICKET THE APPLICANT'S PREMISES AND ANY CONSTRUCTION SITE WHERE ROOFERS EMPLOYED BY THE APPLICANT ARE EMPLOYED.

6. IT IS CLEAR FROM THE FACTS RECITED ABOVE THAT FROM SEPTEMBER, 1961 UP TO APRIL 11TH, 1968 THE RESPONDENT UNION FAILED TO ASSERT THE BARGAINING RIGHTS FOR WHICH IT WAS CERTIFIED ON AUGUST 30TH, 1960. WHEN A UNION IS CERTIFIED AS BARGAINING AGENT FOR EMPLOYEES IT IS EXPECTED THAT THE UNION WILL TAKE WHATEVER STEPS ARE OPEN TO IT TO ADVANCE ITS BARGAINING POSITION AND IN SOME WAY ACTIVELY ASSERT ITS BARGAINING RIGHTS FOR THE EMPLOYEES. WHERE A UNION IS FOUND TO HAVE SLEPT ON ITS BARGAINING RIGHTS IN THE MANNER OUTLINED ABOVE FOR A SUBSTANTIAL PERIOD OF TIME, IT MUST BE HELD THAT SUCH UNION HAS ABANDONED ITS BARGAINING RIGHTS (SEE BARRIE TANNING, LIMITED CASE, O.L. R.B. MONTHLY REPORT, MAY 1966, P. 128).

7. ON THE FACTS OF THIS CASE, IT IS APPARENT THAT THE UNION SLEPT ON ITS BARGAINING RIGHTS FROM SEPTEMBER, 1961 UP TO APRIL, 1968, DURING WHICH TIME NO ATTEMPT WAS MADE TO ACTIVELY PROMOTE THE INTERESTS OF THE EMPLOYEES FOR WHOM THE UNION HAD BEEN CERTIFIED, AND IN THESE CIRCUMSTANCES, THE BOARD MUST FIND THAT THE RESPONDENT UNION HAD ABANDONED ITS BARGAINING RIGHTS SOME TIME PRIOR TO APRIL, 1968.

8. IN VIEW OF THE FACT THE BOARD FINDS THAT THE RESPONDENT ABANDONED ITS BARGAINING RIGHTS PRIOR TO APRIL, 1968, THE BOARD IS OF OPINION THAT THE ACTION OF THE UNION ON APRIL 11TH, 1968 AND AGAIN ON SEPTEMBER 13TH, 1968, WHICH WAS A UNILATERAL ATTEMPT TO RESTORE A BARGAINING POSITION LONG SINCE ABANDONED, WAS AN INEFFECTUAL ATTEMPT TO ASSERT BARGAINING RIGHTS WHICH HAVE BEEN LOST FOR SOME CONSIDERABLE TIME.

9. THERE IS AN ONUS ON A UNION WHICH IS CERTIFIED AS A BARGAINING AGENT TO ACTIVELY PROMOTE THE BARGAINING RELATIONSHIP AND WHERE A UNION FAILS TO DO SO FOR A SUBSTANTIAL PERIOD OF TIME, IT MUST BE HELD THAT THE UNION HAS ABANDONED ITS BARGAINING RIGHTS.

10. IN VIEW OF OUR FINDINGS THAT THE RESPONDENT UNION HAS ABANDONED ITS BARGAINING RIGHTS AND IS UNABLE TO UNILATERALLY REVIVE SUCH BARGAINING RIGHTS, IT IS UNNECESSARY FOR THE BOARD TO DEAL WITH THE MERITS OF THE INSTANT APPLICATION AND THE BOARD ACCORDINGLY DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF THE APPLICANT AT FORT WILLIAM ENGAGED IN THE APPLICATION OF ROOFING MATERIALS (OTHER THAN WOOD SHINGLES AND METAL) FOR WHOM IT HAS FORMERLY BEEN THE BARGAINING AGENT.

11. THIS APPLICATION IS THEREFORE TERMINATED.

15151-68-R: JOSEPH H. CORMIER L. CARTIER F. K. VANVOLKENBURG (ASSOCIATE REPRESENTATIVES) (APPLICANTS) V. INTERNATIONAL BROTHERHOOD OF TEAMSTERS WAREHOUSEMEN, CHAUFFEURS AND HELPERS OF AMERICA UNION LOCAL 647 (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: OCTOBER 1, 1968.

1. THE APPLICANTS APPLIED ON SEPTEMBER 24TH, 1968 UNDER SECTION 43 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF DEPENDABLE CATERERS LIMITED AT METROPOLITAN TORONTO REPRESENTED BY THE RESPONDENT.

2. IT WOULD APPEAR THAT A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER TO ASSIST THE RESPONDENT AND DEPENDABLE CATERERS LIMITED ON SEPTEMBER 3RD, 1968 AND THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND DEPENDABLE CATERERS LIMITED EXPIRED PRIOR TO THE INSTANT APPLICATION BEING MADE. SECTION 43 OF THE ACT PROVIDES THAT AN APPLICATION FOR TERMINATION CAN ONLY BE MADE PURSUANT TO THAT SECTION PRIOR TO THE TIME AT WHICH THE MINISTER HAS APPOINTED A CONCILIATION OFFICER.

3. SECTION 46(2) OF THE ACT PROVIDES THAT AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF A TRADE UNION CANNOT BE MADE WHERE A CONCILIATION OFFICER HAS BEEN APPOINTED BY THE MINISTER UNLESS FOLLOWING SUCH APPOINTMENT:

- (A) AT LEAST TWELVE MONTHS HAVE ELAPSED FROM THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER OR A MEDIATOR; OR
- (C) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS INFORMED THE PARTIES THAT HE DOES NOT DEEM IT DESIRABLE TO APPOINT A CONCILIATION BOARD,

WHICHEVER IS LATER.

4. IT THEREFORE APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT NONE OF THE TIME PERIODS REFERRED TO IN THE PRECEDING PARAGRAPH COULD HAVE ELAPSED BETWEEN THE DATE OF THE APPOINTMENT OF THE CONCILIATION OFFICER AND THE DATE OF THE MAKING OF THIS APPLICATION.

5. IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE IT WOULD FOLLOW, PURSUANT TO THE PROVISIONS OF SECTION 46(2) OF THE ACT, THAT THIS APPLICATION IS UNTIMELY.

6. THE BOARD ACCORDINGLY DIRECTS THE APPLICANTS TO ADVISE THE BOARD IN WRITING ON OR BEFORE THE 9TH DAY OF OCTOBER, 1968, WHETHER, IN THEIR OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANTS ARE OF OPINION THAT THE BOARD IS IN ERROR THEY WILL INCLUDE IN THEIR ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF THEIR OPINION.

7. THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANTS.

8. IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANTS.

DECISION OF THE BOARD:

OCTOBER 10, 1968.

1. IN ITS DECISION DATED OCTOBER 1ST, 1968 IN THIS MATTER, THE BOARD DIRECTED THAT THE APPLICANTS ADVISE THE BOARD IN WRITING ON OR BEFORE OCTOBER 9TH, 1968 WHETHER IN THE OPINION OF THE APPLICANTS THE BOARD WAS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT IN THE BOARD'S DECISION OF OCTOBER 1ST, 1968.

2. SINCE THE BOARD HAS NOT RECEIVED ANY COMMUNICATION FROM THE APPLICANTS AS DIRECTED, THE BOARD IS SATISFIED THAT PURSUANT TO THE PROVISIONS OF SECTION 46(2) OF THE LABOUR RELATIONS ACT THIS APPLICATION IS UNTIMELY.

3. IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANTS HAVE FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THIS APPLICATION IS THEREFORE DISMISSED.

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF

DURING OCTOBER

14818-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (COMPLAINANT) v. POWELL AGRI-SYSTEMS LIMITED (RESPONDENT).

- AND -

14928-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1059 (COMPLAINANT) v. POWELL AGRI-SYSTEMS LIMITED (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: J. B. WATERMAN, F. DONNE FOR THE APPLICANT; E. HOREMBALA FOR THE RESPONDENT.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER
P. J. O'KEEFFE: OCTOBER 21, 1968.

1. THIS IS A COMPLAINT FOR RELIEF PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT ALLEGES THAT DAVID DOUGLAS, WAYNE DAVIS, HAROLD MACCREADY, DONALD WHITNEY, JAMES THURSTON, RICHARD CROCKETT AND DAVID CHAMBERS HAVE BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTION 48, 50(A) AND (B) OF THE LABOUR RELATIONS ACT IN THAT THEY WERE DISCHARGED BY THE RESPONDENT BECAUSE THEY WERE MEMBERS OF THE COMPLAINT UNION. THE COMPLAINANT REQUESTS THAT THEY BE REINSTATED WITH COMPENSATION. THE PARTIES AGREED AT THE HEARING THAT THE COMPLAINT WITH RESPECT TO DAVID DOUGLAS BE HEARD TOGETHER WITH THE COMPLAINT OF THE OTHER AGGRIEVED PERSONS NAMED ABOVE AND THAT THE EVIDENCE ADDUCED BY APPLIED TO BOTH APPLICATIONS.

2. THE RESPONDENT IS LOCATED IN OTTERVILLE AND IS ENGAGED IN THE MANUFACTURE AND DISTRIBUTION OF PRODUCTS RELATED TO THE TOBACCO INDUSTRY. THE EVIDENCE ESTABLISHED THAT ON JUNE 19TH, 1968,

CERTAIN EMPLOYEES OF THE RESPONDENT ARRANGED FOR A MEETING TO BE HELD IN THE OTTERVILLE PARK WITH RESPECT TO ORGANIZATION OF A UNION FOR THE EMPLOYEES OF THE RESPONDENT. DUE TO RAIN THAT EVENING, DAVID DOUGLAS HELD THE MEETING AT HIS HOME. NINETEEN EMPLOYEES ATTENDED THE MEETING AND 18 SIGNED APPLICATIONS FOR MEMBERSHIP IN THE COMPLAINANT UNION. DOUGLAS TESTIFIED THAT THE FOLLOWING DAY JOE VAN BOMELL, SHOP FOREMAN, ASKED HIM WHAT HE WAS HOLDING AT HIS HOUSE, "A UNION MEETING OR SOMETHING"? IT WAS ADMITTED BY ROBERT WILSON, THE EXECUTIVE VICE-PRESIDENT AND GENERAL MANAGER OF THE RESPONDENT, THAT HE BECAME AWARE OF UNION ACTIVITY AT THE PLANT FOR THE FIRST TIME ON FRIDAY, JUNE 21ST. HE WAS THEN IN SOUTH CAROLINA BUT WAS INFORMED OF THIS BY TELEPHONE. WILSON TALKED TO A NUMBER OF PERSONS ON THE TELEPHONE THAT MORNING INCLUDING JOE VAN BOMELL, MR. PETTIGREW, A VICE-PRESIDENT OF THE RESPONDENT AND FRANK GELINAS, THE PERSONNEL MANAGER AT THAT TIME. WILSON SAID IT WAS DURING THIS DISCUSSION THAT THE DECISION TO FIRE DOUGLAS WAS MADE BECAUSE OF HIS PREVIOUS INSUBORDINATION AND DIFFICULTIES WITH HIS TIME CARD OF WHICH HE HAD BEEN MADE AWARE. DOUGLAS TESTIFIED THAT HE HAD BEEN EMPLOYED BY THE RESPONDENT FOR ABOUT 3 1/2 MONTHS PRIOR TO HIS DISCHARGE AND THERE HAD BEEN NO COMPLAINTS ABOUT THE QUALITY OF HIS WORK. ON THE 16TH OR 17TH OF JUNE THERE HAD BEEN A COMPLAINT CONCERNING INSUBORDINATION BY NOT FOLLOWING THE FOREMAN'S ORDERS TO DO HIS WORK IN THE PROPER AREA. IN THAT REGARD, DOUGLAS SAID BECAUSE THE AREA HE WAS TOLD TO SPRAY PAINT IN WAS BLOCKED HE COULD NOT CARRY OUT THE FOREMAN'S ORDERS AND SO ADVISED HIM WHO TOOK NO ACTION AT THAT TIME. ON THE 20TH OF JUNE, HOWEVER, HE HAD A DISCUSSION WITH GELINAS CONCERNING THE INSUBORDINATION AND HE SAID HE WAS GIVEN TWO WEEKS TO "STRAIGHTEN OUT". HE SAID THAT NO ONE HAD SPOKEN TO HIM ABOUT HIS TIME CARDS UNTIL THE DAY HE WAS FIRED. THERE WERE THREE TIME CARDS SUBMITTED IN EVIDENCE FOR THE PERIODS ENDING APRIL 7TH, MAY 17TH AND JUNE 15TH. ALL THREE DISCLOSED ERRORS AND ONE WAS SMUDGED. DOUGLAS SAID HE BLURRED SOME AFTER HE HAD WASHED THE PAINT OFF HIS HANDS AND THE OTHER ERRORS WERE THERE BECAUSE OF ANOTHER EMPLOYEE BRUSHING HIS ARM WHEN HE PUNCHED OUT BUT NO ONE FROM MANAGEMENT HAD SPOKEN TO HIM ABOUT THE CARDS IN THE MONTHS OF APRIL, MAY OR JUNE. ON THURSDAY, JUNE 20TH, DOUGLAS SAID THAT HE HAD OVERHEARD A CONVERSATION INVOLVING PETTIGREW, GELINAS AND A MR. FLITTON DURING WHICH PETTIGREW SAID "I HAVE A NOTION TO FIRE THE WHOLE --- BUNCH OF THEM." WAYNE NOELS, AN EMPLOYEE OF THE RESPONDENT, TESTIFIED THAT HE WAS WITH DOUGLAS AT THAT TIME AND ALSO OVERHEARD PART OF THIS CONVERSATION AND SAID THAT THE STATEMENT ABOVE WAS MADE BY PETTIGREW. DOUGLAS WAS DISCHARGED ON FRIDAY, JUNE 21ST BY GELINAS AND VAN BOMELL. HE SAID THAT GELINAS MENTIONED AT THAT TIME THAT THE REASON FOR HIS DISCHARGE WAS HIS RECENT INSUBORDINATION AND THAT HE HAD HEARD THAT DOUGLAS WAS A UNION ORGANIZER.

3. THERE WAS EVIDENCE ADDUCED WHICH ESTABLISHED THAT ON MONDAY, JUNE 24TH, 1968, WILSON CALLED A MEETING OF THE EMPLOYEES OF THE RESPONDENT AT ABOUT 7:30 A.M. CHAIRS WERE SET UP IN THE LUNCH ROOM FOR THE EMPLOYEES AND WILSON ADDRESSED THE MEETING FOR ABOUT 15 MINUTES. IN PART HIS EVIDENCE IS THAT HE TOLD THEM WHAT THE COMPANY HAD DONE UP TO THAT TIME AND THE FUTURE EXPECTATIONS WIHTOUT MENTIONING ANY REDUCTION OF SALES. HE DISCUSSED THE PROS AND CONS OF UNIONS AND THE DIFFICULTIES THE COMPANY WOULD HAVE IN OPERATING UNDER A UNION; WAGES AND THE BENEFITS WHICH THE COMPANY HAD GIVEN THEM TO THAT TIME; THAT A UNION WAS NOT IN THE COMPANY'S PLANS AT THAT TIME; THAT THE CONSTRUCTION OF A NEW BUILDING AND THE INSTALLATION OF PRODUCTION EQUIPMENT WAS TEMPORARILY SUSPENDED AS WAS THE COMPANY'S PLANS WITH THE ONTARIO DEVELOPMENT BOARD UNTIL THE FUTURE WAS MORE CLEARLY ESTABLISHED FOR THE COMPANY. HE SUGGESTED THAT AN EMPLOYEES' COUNCIL BE FORMED FOR THE PURPOSES OF TALKING TO MANAGEMENT BY ELECTION WITHIN THE EMPLOYEES. FOR THIS PURPOSE, THE PLANT WAS DIVIDED INTO FIVE SECTIONS AND THE LEAD HAND IN EACH SECTION WAS GIVEN THE NAMES OF THE EMPLOYEES IN THAT SECTION AND WERE TOLD THAT THEY COULD VOTE FOR ANYONE IN THAT SECTION. THE BALLOTS WERE SUBSEQUENTLY PREPARED AND DISTRIBUTED TO THE EMPLOYEES WHO VOTED AND SIGNED THE BALLOT FORM WHICH WERE THEN TURNED INTO THE COMPANY. DONALD WHITNEY'S EVIDENCE WITH RESPECT TO THAT MEETING WAS THAT WILSON SAID THAT THE COMPANY WOULD NOT WORK UNDER A UNION AND IF ANYONE BELONGED TO THE UNION THEY MIGHT AS WELL WORK FOR A UNION SHOP AND IF THEY WANTED ONE THEN THE SHOP WOULD CLOSE DOWN. HE SAID THAT DURING THE TIME HE WORKED FOR THE COMPANY HE HAD NEVER ATTENDED A MEETING SUCH AS THIS. EVIDENCE WAS ADDUCED BY THE RESPONDENT THAT THERE HAD BEEN PREVIOUS MEETINGS WITH EMPLOYEES BY MANAGEMENT BUT THE MEETING HELD ON JUNE 24TH WAS UNIQUE INSOFAR AS THE TIME IT WAS HELD AND THE PHYSICAL SET UP FOR IT. IT IS ABUNDANTLY CLEAR THAT THE MEETING WAS INSPIRED BY THE KNOWLEDGE OF THE RESPONDENT OF UNION ACTIVITY AT THE PLANT AND ALTHOUGH EMPLOYEE BENEFITS MAY HAVE BEEN DISCUSSED AT A PREVIOUS MEETING NONE OF THE OTHER MEETINGS DEALT WITH THE SUBJECT OF UNION.

4. DOUGLAS TESTIFIED THAT IN THE EVENING OF JUNE 24TH SEVEN OR EIGHT EMPLOYEES OF THE RESPONDENT HELD A UNION MEETING IN OTTERTVILLE PARK INCLUDING WHITNEY, CHAMBERS AND HIMSELF. HE SAID THAT HE SAW PETTIGREW, FLIPPANT AND FRANK FINCH (A STORE OWNER IN OTTERTVILLE) AT THE PARK THAT EVENING AND THAT THEY OBSERVED THE EMPLOYEES AT THE MEETING. WHITNEY SAID THAT HE SAW PETTIGREW AND FLIPPANT STANDING NEAR WHERE A BALL GAME WAS GOING ON AND THEY WERE LOOKING AT THE EMPLOYEES AND COUNTING. THEY WERE THERE ABOUT ONE HALF OF AN HOUR AND LEFT BEFORE THE GAME WAS OVER. WHITNEY SAID THAT HE OFTEN GOES TO THE PARK WITH HIS CHILDREN BUT HAD NEVER SEEN PETTIGREW THERE BEFORE BUT STATED THAT IT IS A PUBLIC PARK OPEN FOR ANYONE TO USE.

5. WHITNEY HAD WORKED FOR ABOUT FIVE WEEKS PRIOR TO HIS DISCHARGE ON JULY 8TH. HE WAS A MEMBER OF THE APPLICANT UNION HAVING JOINED AT THE MEETING HELD AT DOUGLAS' HOUSE ON JUNE 19TH. HE SAID DURING THAT TIME THERE HAS BEEN NO COMPLAINTS ABOUT HIS WORK NOR HAD HE EVER BEEN REPRIMANDED. ON FRIDAY, JULY 5TH HE WAS NOT AT WORK BECAUSE OF ILLNESS AND SAID THAT HE HAD TOLD WAYNE DAVIS TO TELL JOE VAN BOMELL THAT HE WOULD NOT BE IN. WAYNE DAVIS TESTIFIED THAT HE KNEW WHITNEY WAS ABSENT ON THE 5TH BECAUSE WHITNEY'S WIFE HAD TOLD HIM AND HE SAID THAT HE TOLD VAN BOMELL THAT WHITNEY WOULD NOT BE IN. HE SAID THAT HE WAS OFF WORK ON THE FIRST SATURDAY AFTER HE HAD BEEN HIRED AND WAS TOLD BY VAN BOMELL THAT IF IT HAPPENED AGAIN HE SHOULD TELEPHONE THE COMPANY. WHITNEY DOES NOT HAVE A TELEPHONE AT HIS HOUSE. HE WAS NEVER WARNED THAT ABSENCES WOULD BE A CAUSE FOR DISCHARGE NOR OF THE COMPANY POLICY REGARDING ABSENCES. HE HAD PREVIOUSLY TAKEN TIME OFF AND HAD TELEPHONED THE COMPANY. HE REPORTED FOR WORK ON JULY 8TH BUT GELINAS SAID BECAUSE HE HAD NOT REPORTED FOR WORK ON FRIDAY HE HAD TO LET HIM GO.

6. WAYNE DAVIS TESTIFIED THAT HE HAD WORKED FOR THE RESPONDENT SINCE APRIL 1968 AND WAS DISCHARGED ON JULY 5TH. GELINAS AND VAN BOMELL SAID AT THAT TIME THAT BECAUSE HE HAD A CRIMINAL RECORD HE HAD TO BE LET GO. ON THURSDAY, JULY 4TH HE HAD BEEN IN COURT AND WAS CONVICTED FOR DRINKING UNDER AGE. THIS WAS HIS SECOND SUCH CONVICTION DURING HIS EMPLOYMENT WITH THE RESPONDENT. AT THE TIME OF THE PREVIOUS CONVICTION HE HAD TOLD THE FOREMAN ABOUT IT WHO ONLY ASKED HOW MUCH HE HAD BEEN CHARGED. HE IS A MEMBER OF THE COMPLAINANT UNION HAVING JOINED ON JUNE 19TH. THERE WERE NO COMPLAINTS BOUT HIS WORK.

7. HARRY MACCREADY WAS EMPLOYED BY THE RESPONDENT FOR ABOUT FIVE MONTHS PRIOR TO HIS DISCHARGE ON JUNE 28TH. HE IS A MEMBER OF THE COMPLAINANT UNION HAVING JOINED AT THE MEETING HELD AT DOUGLAS' HOUSE AND WAS ALSO AT THE MEETING IN THE PARK ON JUNE 4TH. HE HAD BEEN ABSENT FROM WORK ON FIVE OCCASIONS TO APPEAR IN COURT AND WAS CONVICTED OF THEFT THE DAY BEFORE HE WAS DISCHARGED. ON THAT DAY HE HAD ASKED VAN BOMELL IF HE COULD GET HIS PAY CHEQUE EARLY SO HE COULD PAY THE FINE. THE COMPANY TOLD HIM THAT THE REASON FOR HIS DISCHARGE WAS HIS CRIMINAL RECORD.

8. RICHARD CROCKETT WAS EMPLOYED BY THE RESPONDENT FOR LESS THAN ONE MONTH ON THE ROAD GANG ERECTING KILNS. HE WAS LAID OFF ON JUNE 29TH ALONG WITH TWO OTHER EMPLOYEES, THURSTON AND KNOWLES. HE IS A MEMBER OF THE COMPLAINANT UNION. THERE WERE NO COMPLAINTS ABOUT HIS WORK AND SAID IN THE THREE DAYS BEFORE HIS LAY OFF HE WAS INSIDE THE PLANT DOING ODD JOBS.

9. DAVID CHAMBERS WORKED FOR THE RESPONDENT FOR ABOUT ONE MONTH MAKING WALLS. HE HAD NOT RECEIVED ANY COMPLAINTS DURING THAT TIME THAT HIS PRODUCTION WAS NOT SATISFACTORY. HE MADE ABOUT 8 - 9 WALLS A DAY. HE JOINED THE COMPLAINANT UNION AT THE MEETING HELD AT DOUGLAS' HOUSE. HE WAS NOT AT WORK ON FRIDAY, JUNE 21ST. VAN BOMELL TOLD HIM IN THE MORNING OF JUNE 24TH THAT HE WAS DISCHARGED BECAUSE THE LEAD HAND, DON CHISOLM SAID THAT HE HAD NOT BEEN PUTTING UP ENOUGH WALLS. CHAMBERS CLAIMED THAT WHEN HE SAW HIM LATER THAT MORNING CHISOLM DID NOT KNOW THAT HE HAD BEEN FIRED. WHITNEY TESTIFIED THAT HE WORKED IN THE SAME AREA AS CHAMBERS AND SAID THEY BOTH MADE ABOUT THE SAME NUMBER OF WALLS.

10. BOTH VAN BOMELL AND PETTIGREW TESTIFIED THAT THEY FIRST KNEW OF UNION ACTIVITY AT THE PLANT ON MONDAY, JUNE 24TH AT THE MEETING OF THE EMPLOYEES ON THAT DAY. WILSON ON THE OTHER HAND SAID THAT HE SPOKE TO BOTH OF THESE MEN ON THE TELEPHONE ON JUNE 21ST DURING WHICH CONVERSATION HE FIRST BECAME AWARE OF UNION ACTIVITY ALTHOUGH STATING THAT IT WAS ONLY BY WAY OF A RUMOUR. VAN BOMELL FURTHER DENIED ANY CONVERSATION WITH DOUGLAS ABOUT THE MEETING AT HIS HOUSE AND SAID HE WAS DISCHARGED FOR TAKING TIME OFF WITHOUT PROPER NOTIFICATION AND THAT HE DEFACED HIS TIME CARDS. HE COULD NOT RECALL WHETHER THERE WERE ANY FURTHER INCIDENTS WITH RESPECT TO THE CARDS AFTER JUNE 1ST. AT THE MEETING ON JUNE 19TH HE SAID THAT DOUGLAS WAS TOLD TO STRAIGHTEN OUT BUT WAS NOT GIVEN A SPECIFIC TIME TO DO SO. WITH RESPECT TO CHAMBERS VAN BOMELL SAID THAT HE WAS A PROBATIONARY EMPLOYEE AND DID NOT WORK UP TO PAR ON THE JOB HE WAS ASSIGNED AND WHEN HE FAILED TO SHOW UP FOR WORK WITHOUT NOTIFICATION, MANAGEMENT DECIDED TO RELEASE HIM. MACCREADY WAS LET GO BECAUSE OF HIS RECORD. CROCKETT ALONG WITH TWO OTHER EMPLOYEES WERE LET GO DUE TO LACK OF WORK. VAN BOMELL SAID THAT SINCE THEY WERE LAID OFF, ONE MAN, A PROFESSIONAL TOBACCO CURER, HAD BEEN HIRED BUT NO OTHERS. UNDER CROSS-EXAMINATION HOWEVER HE INDICATED THAT POOLE AND RYSINSKI WERE EMPLOYEES OF THE RESPONDENT BUT COULD NOT REMEMBER THE DATES OF THEIR EMPLOYMENT. WILSON'S TESTIMONY WAS THAT THEY WERE HIRED ABOUT ONE WEEK BEFORE JUNE 28TH. NOELS TESTIFIED THAT THOSE TWO PERSONS STARTED WORK SOMETIME AFTER THE FIRST UNION MEETING. VAN BOMELL DENIED THAT ANYONE HAD ADVISED HIM THAT WHITNEY WOULD BE ABSENT ON JULY 5TH AND THIS ABSENCE WAS THE ONLY REASON FOR HIS DISCHARGE. IN THIS REGARD, THE BOARD HEARD THE TESTIMONY OF JOHN ARMSTRONG, AN EMPLOYEE OF THE RESPONDENT, WHO SAID THAT HE HAD BEEN ABSENT FROM WORK ON A NUMBER OF OCCASIONS WITHOUT TELEPHONING THE COMPANY AND IT WAS ONLY A WEEK BEFORE THIS HEARING IN THIS MATTER THAT HE HAD BEEN TOLD TO TELEPHONE THE COMPANY IF HE COULD NOT BE AT WORK.

11. THE EVIDENCE GIVEN BY WILSON AND PETTIGREW IN THIS MATTER CLEARLY ESTABLISHES THE ANTI-UNION BIAS OF THE RESPONDENT AND IT IS AGAINST THIS BACKGROUND THAT THE COMPLAINANT'S CASE MUST BE VIEWED. THE MEETING HELD AT THE PLANT ON JUNE 24TH RESULTED FROM WILSON'S KNOWLEDGE OF THE UNION ACTIVITY WHICH KNOWLEDGE HE MUST HAVE OBTAINED THROUGH SOMEONE AT THE PLANT WHO IN TURN KNEW OF IT PRIOR TO JUNE 21ST. WILSON DENIED KNOWLEDGE OF ANY INDIVIDUAL'S PARTICIPATION IN THE UNION BUT HAVING REGARD TO THE CIRCUMSTANCES SURROUNDING THE DISCHARGE OF DOUGLAS AND WHITNEY, WE CANNOT ACCEPT THAT STATEMENT. EVEN THOUGH AN EMPLOYEE, KENNERLY, TOLD THE BOARD THAT AFTER HE HEARD WILSON'S SPEECH HE DID NOT BELIEVE THAT THE RESPONDENT WOULD CLOSE THE SHOP, SUCH A CONCLUSION WAS NOT SHARED BY THE OTHER AGGRIEVED PERSONS AND THE CONTENT OF THE SPEECH INCLUDING THE FORMATION OF AN "EMPLOYEES' COUNCIL", WAS UNDOUBTEDLY DESIGNED TO IMMEDIATELY DISCOURAGE THE EMPLOYEES FROM ORGANIZING A UNION OF THEIR CHOICE AND TO THWART THE UNION CAMPAIGN THEN IN EXISTENCE.

12. WE PREFER THE TESTIMONY OF DOUGLAS AND WHITNEY TO THAT OF THE WITNESSES FOR THE RESPONDENT AND FIND THAT THE RESPONDENT WAS QUITE AWARE OF THEIR SUPPORT AND PARTICIPATION IN THE UNION AND THAT THE COMPANY WAS MOTIVATED BY THESE FACTORS IN DISCHARGING EACH OF THEM. THE BOARD MUST DETERMINE IN CASES OF THIS NATURE WHETHER IN DEALING WITH THE AGGRIEVED PERSONS THE COMPANY HAS ACTED CONTRARY TO THE LABOUR RELATIONS ACT. IT MAY BE IN CERTAIN CIRCUMSTANCES THAT THE EMPLOYER COULD BE CONSIDERED TO HAVE ACTED UNFAIRLY WITH AN EMPLOYEE BUT THE BOARD MUST ONLY BE CONCERNED WITH THE QUESTION OF THE MOTIVATION OF THE EMPLOYER IN ITS ACTIONS REGARDING THE EMPLOYEE. IN THIS REGARD THEREFORE WE ARE NOT CALLED UPON TO ASSESS THE RESPONDENT'S POLICIES RESPECTING AN EMPLOYEE'S PERSONAL RECORDS AND WE ACCEPT ITS POSITION THAT WAYNE DAVIS AND HAROLD MACCREADY WERE DISCHARGED ONLY FOR THE REASONS GIVEN AT THE HEARING.

13. THE RESPONDENT ADDUCED EVIDENCE ESTABLISHING THAT DURING JUNE, SALES BEGAN TO LEVEL OFF AND THE FUTURE DELIVERY SCHEDULE WAS LESS THAN IT HAD BEEN, SO THAT FOR THE WEEK ENDING JUNE 27TH WAS THE LAST WEEK THERE WERE DELIVERIES OF 10 OR OVER SYSTEMS AND AFTER THAT THE DELIVERIES STARTED DOWN TO 4, WITH ORDERS STOPPING AND WORK LOAD DOWN. WILSON STATED THAT THE RESPONDENT HAS A POLICY THAT AN EMPLOYEE IS CONSIDERED TO BE A PROBATIONARY EMPLOYEE FOR THE FIRST 30 DAYS OF HIS EMPLOYMENT AT THE END OF WHICH HIS PERFORMANCE IS ASSESSED AND HE IS EITHER RETAINED AND GIVEN A RAISE OR RELEASED. BOTH CROCKETT AND CHAMBERS FELL WITHIN THIS CATEGORY. CROCKETT WORKED ON THE ERECTING ROAD CREW

AND WAS LAID OFF ALONG WITH TWO OTHER EMPLOYEES ON JUNE 28TH. PRIOR TO THAT DAY HE SAID THAT HE HAD BEEN AT THE PLANT DOING ODD JOBS WHICH ADMISSION CORRESPONDS TO THE RESPONDENT'S CONTENTION THAT DELIVERIES OF KILNS HAD FALLEN OFF. ALTHOUGH TWO OTHER PERSONS MAY HAVE BEEN HIRED ABOUT THAT TIME IT APPEARED FROM THE EVIDENCE THAT THEY WERE STUDENTS AND THERE WAS NO EVIDENCE TO ESTABLISH WHAT THEIR JOBS WERE OR THAT THEY IN ANY WAY REPLACED THOSE WHO WERE LAID OFF. WE FIND NOTHING IMPROPER IN THE RESPONDENT'S ACTION WITH RESPECT TO CROCKETT AS THE LAY OFF APPEARED, FOR GOOD BUSINESS REASONS, TO BE NECESSARY AT THAT TIME.

14. CHAMBERS WORKED INSIDE THE PLANT BUILDING WALLS, HE WAS NOT AT WORK ON JUNE 21ST AND WAS DISCHARGED BY VAN BOMELL WHEN HE REPORTED FOR WORK ON THE MORNING OF JUNE 24TH. HE WAS TOLD THAT HE WAS NOT PUTTING UP ENOUGH WALLS. WILSON TESTIFIED THAT HE MADE THE DECISION TO LAY OFF CHAMBERS AS HE HAD SEEN HIM IN THE PLANT AND HE WAS NOT VERY AGILE. VAN BOMELL SAID THAT HE DID NOT WORK UP TO PAR AND DID NOT SHOW UP FOR WORK WITHOUT NOTIFYING THE COMPANY. THERE HAD BEEN NO COMPLAINTS TO HIM CONCERNING HIS WORK AND CHAMBERS THOUGHT HIS PRODUCTION WAS SATISFACTORY AS DID WHITNEY WHO HAD OBSERVED HIS WORK AND COMPARED IT FAVOURABLY WITH THE LEAD HAND. MANAGEMENT HAS DETERMINED THAT THE POLICY IN THE PLANT ALLOWS IT TO MAKE A DECISION ON AN EMPLOYEE'S PERFORMANCE WITHIN THE PROBATIONARY PERIOD AND IF A DECISION IS MADE TO RELEASE HIM FOR UNSATISFACTORY PERFORMANCE THERE CAN BE NO COMPLAINT. WE POINT OUT HOWEVER, THAT A PROBATIONARY EMPLOYEE IS ENTITLED TO THE SAME PROTECTION UNDER THE ACT AS ANY OTHER EMPLOYEE. HAVING REGARD TO ALL THE CIRCUMSTANCES SURROUNDING THE TIME OF CHAMBERS' DISCHARGE WE ARE NOT PERSUADED THAT THE RESPONDENT DISCHARGED HIM FOR THE REASONS IT GAVE BUT RATHER WE ARE LEAD TO THE CONCLUSION THAT THE RESPONDENT WAS MOTIVATED BY HIS MEMBERSHIP IN AND SUPPORT FOR THE COMPLAINANT UNION.

15. ACCORDINGLY, WE FIND THAT ON THE BALANCE OF PROBABILITIES, THE RESPONDENT DEALT WITH DAVID DOUGLAS, DONALD WHITNEY AND DAVID CHAMBERS CONTRARY TO THE LABOUR RELATIONS ACT IN REFUSING TO CONTINUE TO EMPLOY EACH OF THE AGGRIEVED PERSONS BECAUSE THEY WERE MEMBERS OF THE COMPLAINANT UNION AND WERE EXERCISING THEIR RIGHTS UNDER THE ACT.

16. THERE WAS NO EVIDENCE OFFERED BY THE COMPLAINANT WITH RESPECT TO THE CLAIM OF JAMES THURSTON AND THEREFORE THE COMPLAINT AS IT RELATES TO HIM IS DISMISSED.

17. FOR THE REASONS SET OUT ABOVE THE COMPLAINT RELATING TO WAYNE DAVIS, HAROLD MACCREADY AND RICHARD CROCKETT IS DISMISSED.

18. OUR DETERMINATION IS THAT DAVID DOUGLAS, DONALD WHITNEY AND DAVID CHAMBERS SHALL BE REINSTATED FORTHWITH IN THE POSITIONS HELD BY THEM AT THE TIME OF THEIR DISCHARGE. HAVING REGARD TO THE EVIDENCE PRESENTED TO THE BOARD WITH RESPECT TO THE AMOUNT OF LOSS OF EARNINGS SUSTAINED BY THE AGGRIEVED PERSONS AND THEIR ATTEMPTS TO MITIGATE THEIR LOSS, THE BOARD FURTHER DETERMINES THAT THE RESPONDENT PAY TO

DAVID DOUGLAS THE SUM OF \$438.00

DONALD WHITNEY THE SUM OF \$415.00,

AS COMPENSATION FOR LOSS OF EARNINGS SUSTAINED BY THEM BETWEEN THE DATE OF THEIR DISCHARGE AND SEPTEMBER 9TH, 1968, THE DATE OF THE FIRST HEARING IN THIS MATTER. IN THIS REGARD THE EVIDENCE OF CHAMBERS WAS THAT AFTER HIS DISCHARGE HE RETURNED TO HIS FATHER'S DAIRY FARM. SINCE THERE IS NO EVIDENCE THAT HE SUFFERED ANY LOSS IN THE CIRCUMSTANCES, WE MAKE NO DETERMINATION FOR COMPENSATION FROM THE DATE OF HIS DISCHARGE TO SEPTEMBER 9TH, 1968.

19. THE BOARD DIRECTS THAT THE PARTIES MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS IF ANY THAT DAVID DOUGLAS, DONALD WHITNEY AND DAVID CHAMBERS SUSTAINED BETWEEN SEPTEMBER 9TH, 1968 AND THE DATE OF THEIR REINSTATEMENT BY THE RESPONDENT WHICH SHALL THEN BE PAID TO THEM. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES ON THE AMOUNT ABOVE REFERRED TO, WITHIN 14 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE, AT THE REQUEST OF EITHER PARTY THE BOARD WILL HOLD A FURTHER HEARING AT WHICH THE PARTIES WILL HAVE THE OPPORTUNITY TO PRESENT EVIDENCE AND MAKE REPRESENTATIONS AS TO ANY ADDITIONAL AMOUNT TO BE PAID TO DAVID DOUGLAS, DONALD WHITNEY AND DAVID CHAMBERS WHICH WILL THEREAFTER BE DETERMINED BY THE BOARD.

DECISION OF BOARD MEMBER J.E.C. ROBINSON.

OCTOBER 21, 1968.

I DISSENT WITH REASONS TO FOLLOW.

14927-68-U: JOHN BALZER (COMPLAINANT) V. GENERAL TRUCK DRIVERS UNION - LOCAL 879 AND KNIPFEL CARTAGE COMPANY LIMITED AND THIBODEAU EXPRESS LIMITED (RESPONDENTS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: RICHARD HOBSON AND JOHN BALZER FOR THE COMPLAINANT, T.E. ARMSTRONG AND R. TAGGART FOR GENERAL TRUCK DRIVERS UNION - LOCAL 879, NO ONE FOR KNIPFEL CARTAGE COMPANY LIMITED, CHARLES J. CLARK, Q.C., AND JOSEPH P. TOTH FOR THIBODEAU EXPRESS LIMITED.

DECISION OF THE BOARD: OCTOBER 28, 1968.

1. THIS IS A COMPLAINT FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT HAS ALLEGED THAT HE HAS BEEN DEALT WITH BY THE RESPONDENTS ON OR ABOUT SEPTEMBER 11TH, 1967, CONTRARY TO THE PROVISIONS OF SECTION 35(2) OF THE LABOUR RELATIONS ACT. ON THE DATE THIS COMPLAINT WAS MADE THE COMPLAINANT WAS AN EMPLOYEE OF THIBODEAU EXPRESS LIMITED WHICH WAS THE SUCCESSOR TO KNIPFEL CARTAGE COMPANY LIMITED, BY WHOM THE COMPLAINANT HAD BEEN PREVIOUSLY EMPLOYED. THE RESPONDENTS BY WAY OF PRELIMINARY OBJECTION TOOK THE POSITION THAT THE BOARD WAS WITHOUT JURISDICTION TO HEAR THIS MATTER. THE EVIDENCE PERTAINING TO THE RESPONDENTS' PRELIMINARY OBJECTION WAS NOT IN DISPUTE.
2. THE RESPONDENT, THIBODEAU EXPRESS LIMITED, IS A COMMON CARRIER WHICH OPERATES BETWEEN POINTS WITHIN THE PROVINCE OF ONTARIO AND ALSO FROM A TERMINAL LOCATED IN DETROIT IN THE STATE OF MICHIGAN, ONE OF THE UNITED STATES OF AMERICA. THE RESPONDENT, THIBODEAU EXPRESS LIMITED, IS LICENSED AS A PUBLIC COMMERCIAL VEHICLE OPERATOR AND ALSO HOLDS AN EXTRA-PROVINCIAL OPERATOR'S LICENCE. THIBODEAU EXPRESS LIMITED MAKES BETWEEN FORTY AND FIFTY TRIPS DAILY BETWEEN POINTS WITHIN THE METROPOLITAN AREA OF THE CITY OF DETROIT AND POINTS WITHIN THE PROVINCE OF ONTARIO WHICH IT IS LICENSED TO SERVICE. THIBODEAU EXPRESS LIMITED IS SUBJECT TO THE PROVISIONS OF THE CANADA LABOUR STANDARDS CODE AND, IN ITS NEGOTIATIONS FOR COLLECTIVE AGREEMENTS, HAS HAD THE ASSISTANCE OF CONCILIATION OFFICERS APPOINTED BY THE CANADA LABOUR RELATIONS BOARD. THE VOLUME OF BUSINESS RELATED TO ITS DETROIT OPERATIONS REPRESENTS TWENTY TO TWENTY-FIVE PER CENT OF THE TOTAL VOLUME OF THE BUSINESS OF THIBODEAU EXPRESS LIMITED.
3. THE RESPONDENTS ARGUED THAT PURSUANT TO THE PROVISIONS OF SECTIONS 91(29) AND 92(10)(A) OF THE BRITISH NORTH AMERICA ACT, THE UNDERTAKING OF THE RESPONDENT THIBODEAU EXPRESS LIMITED FALLS WITHIN THE EXCLUSIVE JURISDICTION OF THE PARLIAMENT OF CANADA SINCE ITS UNDERTAKING EXTENDS BEYOND THE LIMITS OF THE PROVINCE INTO THE STATE OF MICHIGAN. IT WAS THE COMPLAINANT'S ARGUMENT THAT THE PARLIAMENT OF CANADA DID NOT ENJOY EXCLUSIVE JURISDICTION OVER THE LABOUR RELATIONS OF THE RESPONDENT THIBODEAU EXPRESS LIMITED BUT THAT JURISDICTION IN LABOUR RELATIONS MATTERS IS SHARED BY BOTH THE PROVINCE OF ONTARIO AND THE PARLIAMENT OF CANADA.

4. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT A REGULAR CONTINUOUS AND SUBSTANTIAL PORTION OF THE OPERATIONS OF THIBODEAU EXPRESS LIMITED EXTENDS BEYOND THE PROVINCE OF ONTARIO INTO THE STATE OF MICHIGAN AND IS THEREFORE EXTRAPROVINCIAL IN NATURE. THIBODEAU EXPRESS LIMITED STANDS READY TO PROVIDE A SERVICE INTO THE STATE OF MICHIGAN CONSISTENTLY AND WITHOUT INTERRUPTION.

5. IT MAY BE THAT DIFFERENT ASPECTS OF THE UNDERTAKING OF THIBODEAU EXPRESS LIMITED MAY COME WITHIN THE JURISDICTION OF THE PROVINCE (E.G. THE ISSUANCE OF PUBLIC COMMERCIAL VEHICLE LICENCES) WHILE OTHER ASPECTS OF ITS UNDERTAKING FALL WITHIN FEDERAL JURISDICTION (E.G. CANADA LABOUR STANDARDS CODE). HOWEVER THAT MAY BE, WHEN ONLY ONE ASPECT, I.E. LABOUR RELATIONS, IS CONSIDERED A DETERMINATION MUST BE MADE WHETHER THE UNDERTAKING OF THE EMPLOYER FALLS WITHIN THE EXCLUSIVE JURISDICTION OF EITHER THE PROVINCE OR THE FEDERAL GOVERNMENT. BOTH CANNOT HAVE CONCURRENT JURISDICTION OVER THE SINGLE ASPECT OF THE EMPLOYER'S UNDERTAKING. WHEN THE PRINCIPLES ENUNCIATED IN RE TANK TRUCK TRANSPORT LTD. CASE (1960) 25 D.L.R. (2D) 161, 61 C.L.L.C. ¶15,335, AND R. V. COOKSVILLE MAGISTRATE'S COURT, EX PARTE LIQUID CARGO LINES LTD. CASE, 65 C.L.L.C. ¶14,053, ARE APPLIED TO THE FACTS OF THIS CASE, WE FIND THAT SINCE THE EMPLOYER THIBODEAU EXPRESS LIMITED CONDUCTS A REGULAR CONTINUOUS SUBSTANTIAL OPERATION EXTENDING BEYOND THE LIMITS OF THE PROVINCE INTO THE STATE OF MICHIGAN, WE ARE THEREFORE OF OPINION THAT THE LABOUR RELATIONS ACT OF ONTARIO DOES NOT APPLY TO THE LABOUR RELATIONS BETWEEN THE COMPLAINANT AND THIBODEAU EXPRESS LIMITED AND THEREFORE THIS BOARD HAS NO JURISDICTION TO ENTERTAIN THE COMPLAINT IN THIS MATTER.

6. THE COMPLAINT IS THEREFORE TERMINATED.

INDEXED ENDORSEMENT - SECTION 47A

14959-68-M: HAMILTON MUNICIPAL EMPLOYEES, LOCAL 167 OF THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. HAMILTON-WENTWORTH HEALTH UNIT (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: W. A. ACTON, R. BRADSHAW, L. HEARD
FOR THE APPLICANT, AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 23, 1968.

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2. THIS IS AN APPLICATION UNDER SECTION 47A OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE APPLICANT IS THE BARGAINING AGENT FOR CERTAIN EMPLOYEES OF HAMILTON-WENTWORTH HEALTH UNIT.

3. PRIOR TO JULY 15, 1968, THE APPLICANT WAS THE BARGAINING AGENT FOR EMPLOYEES OF THE VARIOUS CATEGORIES OF THE CORPORATION OF THE CITY OF HAMILTON HEALTH DEPARTMENT. THE EMPLOYEES IN QUESTION WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN LOCAL UNION #167 AND THE CORPORATION OF THE CITY OF HAMILTON ENTERED INTO FEBRUARY 1, 1967 AND IN EFFECT UNTIL THE 31ST DAY OF JANUARY 1969.

4. ON JULY 15, 1968, THE CITY OF HAMILTON HEALTH DEPARTMENT AMALGAMATED WITH THE WENTWORTH COUNTY HEALTH UNIT AND THE NEW BODY IS KNOWN UNDER ITS NEW NAME OF HAMILTON-WENTWORTH HEALTH UNIT. THERE ARE 17 EMPLOYEES OF THE PREVIOUS WENTWORTH COUNTY HEALTH UNIT WHO WERE NOT REPRESENTED BY A TRADE UNION AT THE TIME OF THE AMALGAMATION NOW EMPLOYED BY THE NEW BODY.

5. THE LOCAL UNION #167 ON BEHALF OF THE EMPLOYEES MENTIONED IN THIS APPLICATION GAVE A GENERAL NOTICE UNDER SECTION 47A OF THE LABOUR RELATIONS ACT IN ORDER TO PROTECT THE BARGAINING RIGHTS OF THE SAID EMPLOYEES AND ALSO WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT.

6. IN ITS REPLY TO THE APPLICATION, THE RESPONDENT ADVISES THAT IT HAS NO OBJECTION TO THE APPLICATION OF THE APPLICANT TO REPRESENT HAMILTON-WENTWORTH HEALTH UNIT EMPLOYEES.

7. IN THE CIRCUMSTANCES OF THIS CASE, THE BOARD FINDS THAT THERE HAS BEEN AN AMALGAMATION OF MUNICIPALITIES WITHIN THE MEANING OF SUBSECTION 10 OF SECTION 47A OF THE ACT.

8. THE BOARD DETERMINES THAT THE APPROPRIATE BARGAINING UNIT FOR THE EMPLOYEES AFFECTED BY THIS APPLICATION SHALL CONSTITUTE

ALL EMPLOYEES OF HAMILTON-WENTWORTH HEALTH UNIT SAVE AND EXCEPT EXECUTIVE ASSISTANT, CHIEF HEALTH INSPECTOR, PSYCHOLOGIST, PSYCHOMETRIST, SOCIAL HEALTH WORKER, GENERAL CLERK, AND NURSING HOME INSPECTOR.

9. HAVING REGARD TO THE PROVISIONS OF SECTION 47A (7) TO WHICH REFERENCE IS MADE IN SECTION 47A (10), THE BOARD DIRECTS THAT A REPRESENTATION VOTE BE TAKEN OF THE EMPLOYEES OF HAMILTON-WENTWORTH

HEALTH UNIT IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 8 ABOVE, THOSE ELIGIBLE TO VOTE ARE ALL EMPLOYEES IN THE SAID BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN.

10. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

11. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENT - SECTION 79A

13991-67-M: THE EAST YORK CIVIC FOREMEN'S UNION NO. 820 (TRADE UNION) V. BOROUGH OF EAST YORK (FORMERLY THE CORPORATION OF THE TOWNSHIP OF EAST YORK) (EMPLOYER).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, C. F. KITCHEN,
F. MOFFATT, AND R. SKREPNEK FOR THE TRADE UNION, AND
C. J. CANNON Q.C., AND JOHN B. HART FOR THE EMPLOYER.

DECISION OF THE BOARD: OCTOBER 16, 1968.

1. THIS MATTER ARISES OUT OF A REFERRAL BY THE MINISTER TO THE ONTARIO LABOUR RELATIONS BOARD PURSUANT TO SECTION 79A OF THE LABOUR RELATIONS ACT OF THE QUESTION AS TO WHETHER OR NOT, IN ALL THE CIRCUMSTANCES, AND HAVING REGARD TO THE PROVISIONS OF SECTION 47A OF THE ACT, THE MINISTER OF LABOUR HAS THE POWER UNDER THE ACT TO APPOINT A CONCILIATION OFFICER. INTERIM DECISIONS IN THE MATTER WERE ISSUED BY THE BOARD ON FEBRUARY 7TH, 1968, AT WHICH TIME AN EXAMINER WAS APPOINTED, AND ON MARCH 8TH, 1968, IN WHICH THE BOARD REPLIED TO THE REQUEST OF THE UNION TO REVIEW THE FOREGOING DECISION.

2. THE MAIN ARGUMENT ADVANCED BY THE TRADE UNION, SO DESCRIBED IN THE STYLE OF CAUSE, WAS THAT, ON ALL THE EVIDENCE, THE PROVISIONS OF SECTION 47A HAD NOTHING WHATEVER TO DO WITH THE REQUEST FOR CONCILIATION SERVICES. (THIS SUBMISSION WAS MADE, OF COURSE, NOTWITHSTANDING THE FACT THAT THE QUESTION REFERRED TO THE BOARD BY THE MINISTER IN THIS INSTANCE MAKES SPECIFIC REFERENCE TO SECTION 47A OF THE ACT.) IT ARGUED THAT CERTAIN EVENTS OCCURRED BETWEEN THE DATE WHEN THE NEW BOROUGH CAME INTO EXISTENCE AND THE DATE WHEN THE APPLICATION

FOR CONCILIATION SERVICES WAS MADE BY THE UNION, AND THAT THESE EVENTS PRECLUDE ANY INQUIRY WITH RESPECT TO SECTION 47A OF THE ACT.

3. AT THE TIME OF THE AMALGAMATION THERE WAS AN AGREEMENT BETWEEN THE EAST YORK CIVIC FOREMEN'S UNION AND THE TOWNSHIP OF EAST YORK, WHICH WAS REFERRED TO AS A COLLECTIVE AGREEMENT. THE INTERVENING EVENTS UPON WHICH THE UNION'S ARGUMENT IS BASED INCLUDE THE CONTINUED DEDUCTION OF UNION DUES AND THEIR RE-MISSION TO THE UNION FOLLOWING AMALGAMATION, THE RECOGNITION OF THE UNION AND ITS OFFICERS, THE APPLICATION OF OTHER TERMS OF THE COLLECTIVE AGREEMENT SO CALLED, PARTICULARLY THE GRANTING OF A MID-TERM WAGE INCREASE PROVIDED FOR IN THE AGREEMENT, AND THE REFERENCE BY THE BOROUGH TO THE EXISTENCE OF A COLLECTIVE AGREEMENT. THIS REFERENCE IS CONTAINED IN A LETTER FROM THE EMPLOYER TO THE SECRETARY OF THE UNION DATED NOVEMBER 7TH, 1967. IT CONCERNS THE REQUEST OF THE UNION FOR THE GRANTING OF LEAVE OF ABSENCE FOR ONE OF THE UNION OFFICERS. THE EMPLOYER GRANTED THE REQUEST, ADDING "IN ACCORDANCE WITH THE TERMS OF THE EXISTING COLLECTIVE AGREEMENT".

4. THE UNION SUBMITS THAT THE FOREGOING FACTS ESTABLISH THAT THE BOROUGH HAD ACKNOWLEDGED IN WRITING THAT IT WAS BOUND BY THE AGREEMENT ENTERED INTO BY ITS PREDECESSOR, THE TOWNSHIP OF EAST YORK. THE ARGUMENT CONTINUES THAT THIS MAKES CONSIDERATION OF THE EFFECT OF SECTION 47A WHOLLY UNNECESSARY AND IRRELEVANT. IT POINTS TO THE FURTHER FACT THAT THE UNION GAVE NOTICE UNDER THE AGREEMENT BETWEEN IT AND THE TOWNSHIP OF EAST YORK PURSUANT TO SECTION 40 OF THE ACT, AND THAT, CONSEQUENTLY, THE MINISTER'S POWER TO GRANT CONCILIATION SERVICES DERIVES SOLELY FROM SECTION 13 OF THE ACT AND IS NOT DEPENDENT ON ANY OTHER PROVISIONS. IT IS URGED THAT THE MINISTER "BY SPECULATING AS TO THE POSSIBLE APPLICATION OF SECTION 47A" CANNOT HEREBY ESTABLISH THE SECTION'S APPLICABILITY.

5. THE BOARD IS OF THE OPINION THAT THE VALIDITY OF THE FOREGOING ARGUMENT DEPENDS PRIMARILY UPON THE ANSWER TO THE QUESTION AS TO WHETHER THE AGREEMENT IS IN FACT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(C) OF THE LABOUR RELATIONS ACT, WHICH READS AS FOLLOWS:

"COLLECTIVE AGREEMENT" MEANS AN AGREEMENT IN WRITING BETWEEN AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION, ON THE ONE HAND, AND A TRADE UNION THAT, OR A COUNCIL OF TRADE UNIONS THAT, REPRESENTS EMPLOYEES OF THE EMPLOYER OR EMPLOYEES OF MEMBERS OF THE EMPLOYERS' ORGANIZATION, ON THE OTHERHAND, CONTAINING

PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, THE EMPLOYERS' ORGANIZATION, THE TRADE UNION OR THE EMPLOYEES;

IN ORDER TO GIVE WEIGHT TO THE MAIN ARGUMENT OF THE TRADE UNION, IT IS OF NO AVAIL, IN THE PRESENT CONTEXT, SIMPLY TO FIND THAT THE AGREEMENT WAS ADOPTED AND ITS PROVISIONS IMPLEMENTED BY THE BOROUGH. IT MUST ALSO BE DEMONSTRATED THAT IT IS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE LABOUR RELATIONS ACT.

6. IN RESOLVING THE QUESTION AS TO THE NATURE OF THE AGREEMENT, WE DO NOT BELIEVE THAT THE BOARD IS IN ANY WAY CONFINED OR BOUND BY WHAT MAY HAVE TRANSPIRED BETWEEN THE PARTIES. THE BOARD IS ENTITLED, AND INDEED OBLIGED, TO LOOK AT ALL THE EVIDENCE BEFORE FORMULATING ITS ANSWER TO THE QUESTION POSED BY THE MINISTER. WE MIGHT ADD THAT WE DO NOT BELIEVE THAT THE POWER OF THE MINISTER TO APPOINT A CONCILIATION OFFICER CAN BE CIRCUMSCRIBED OR LIMITED SIMPLY BY THE CONDUCT, UNDERSTANDING, OR AGREEMENT OF THE PARTIES AS TO THE TRUE NATURE OF THE AGREEMENT.

7. IN VIEW OF THE PROVISIONS OF SECTION 1(1)(c), THE NATURE OF THE AGREEMENT IS TO BE DETERMINED BY THE STATUS OF THE PARTIES THERETO AS WELL AS BY ITS CONTENTS. THE BOARD MUST THEREFORE LOOK TO THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, DATED THE 24TH DAY OF JULY, 1968, TOGETHER WITH THE SUBMISSIONS OF COUNSEL MADE WITH RESPECT THERETO AT THE HEARING BEFORE THE BOARD FOR THAT PURPOSE HELD ON SEPTEMBER 16TH, 1968. IN THIS RESPECT WE MIGHT REFER TO PARAGRAPH 2 OF THE BOARD'S DECISION OF MARCH 2ND, 1968, IN WHICH IT WAS OBSERVED THAT THE MAIN ARGUMENT OF THE UNION "MAY VERY WELL BE AFFECTED BY THE INFORMATION OBTAINED BY THE EXAMINER".

8. ON THE BASIS OF ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER, AND HAVING IN MIND THE SUBMISSIONS OF COUNSEL FOR THE PARTIES WITH RESPECT THERETO, THE BOARD FINDS THAT THE EAST YORK CIVIC FOREMEN'S UNION No. 820 COMPRISES PERSONS WHO EXERCISE MANAGERIAL FUNCTIONS AND ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND WHO ARE CONSEQUENTLY NOT EMPLOYEES WITHIN THE MEANING OF SECTION 1(3)(A) AND (B) OF THE LABOUR RELATIONS ACT. THE BOARD FURTHER FINDS THAT THE EAST YORK CIVIC FOREMEN'S UNION No. 820 IS NOT A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(j) OF THE LABOUR RELATIONS ACT, AND THAT THE AGREEMENT MADE BETWEEN THE EAST YORK FOREMEN'S UNION No. 820 AND THE TOWNSHIP OF EAST YORK, EVEN IF IT COULD BE SAID TO HAVE BEEN ACCEPTED BY THE BOROUGH (AND WE MAKE NO FINDING IN THIS RESPECT), IS NOT A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(1)(j) OF THE ACT.

9. IN VIEW OF ALL OF THE FOREGOING THE ANSWER TO THE QUESTION OF THE MINISTER IS "No."

INDEXED ENDORSEMENT - JURISDICTIONAL DISPUTE

14500(A)-68-JD: ABITIBI PAPER COMPANY LTD. STURGEON FALLS DIVISION
(COMPLAINANT) v. UNITED PAPER MAKERS AND PAPER WORKERS LOCAL 135 -
A.F.L. - C.I.O. INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND
PAPER MILL WORKERS - LOCAL NO. 71 A.F.L. - C.I.O. (RESPONDENTS).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: R. T. CARTER, B. C. BARRINGTON,
F. CLARKE AND W. E. FORTIN FOR THE COMPLAINANT, T. H. CURLEY,
R. RENDELL AND J. LYNCH FOR UNITED PAPER MAKERS AND PAPER
WORKERS LOCAL 135, L. A. MACLEAN, W. ANDERSON, N. PAXTON AND
J. SENECA FOR INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE
AND PAPER MILL WORKERS - LOCAL NO. 71.

DECISION OF THE BOARD: OCTOBER 2, 1968.

1. AT THE SECOND HEARING OF THE BOARD IN THIS MATTER, THE REPRESENTATIVE OF THE RESPONDENT UNITED PAPER MAKERS AND PAPER WORKERS LOCAL 135 (HEREINAFTER REFERRED TO AS PAPER MAKERS LOCAL 135) CHALLENGED THE BOARD'S JURISDICTION TO MAKE A DETERMINATION CONCERNING A WORK ASSIGNMENT MADE BY THE COMPLAINANT. IN SUPPORT OF HIS CHALLENGE THE REPRESENTATIVE OF THE SAID RESPONDENT RELIED UPON THE PROVISIONS OF ARTICLE 4 OF THE CURRENT COLLECTIVE AGREEMENT DATED MAY 1ST, 1965 WHICH IS BINDING UPON ALL OF THE PARTIES TO THIS PROCEEDING. THE ARTICLE READS AS FOLLOWS:

THE COMPANY WILL NOT BE ASKED TO ACT UPON ANY MATTERS REGARDING JURISDICTION BETWEEN THE INTERNATIONAL BROTHERHOODS HAVING RECOGNIZED LOCALS IN THE MILL. THE QUESTION OF JURISDICTION SHALL CONFORM TO THE REGULATIONS AS FIXED BY THE AMERICAN FEDERATION OF LABOUR - CONGRESS OF INDUSTRIAL ORGANIZATIONS.

2. BY A DECISION OF THE BOARD DATED AUGUST 29TH, 1968, THE BOARD DIRECTED THAT THE PAPER MAKERS LOCAL 135 FILE WITH THE BOARD FORTHWITH DOCUMENTARY EVIDENCE TO DEMONSTRATE THAT THERE EXISTS IN THE AMERICAN FEDERATION OF LABOUR - CONGRESS OF INDUSTRIAL ORGANIZATIONS A TRIBUNAL WITH THE AUTHORITY TO RESOLVE THE WORK ASSIGNMENT IN DISPUTE BETWEEN THE TWO RESPONDENT UNIONS.

3. A LETTER DATED SEPTEMBER 18TH, 1968 FROM COUNSEL FOR THE

PAPER MAKERS LOCAL 135 WAS RECEIVED BY THE BOARD. THE RELEVANT PORTION OF THE LETTER READS AS FOLLOWS:

PARAGRAPH 4 OF THE COLLECTIVE AGREEMENT PROVIDES THAT MATTER PERTAINING TO JURISDICTION BETWEEN THE UNIONS WOULD BE DISPOSED OF ACCORDING "...TO THE REGULATIONS AS FIXED BY THE A.F.L.-C.I.O.". ENQUIRY HAS NOW PRODUCED THE INFORMATION THAT THE MATTER WOULD BE DEALT WITH UNDER THE "DISPUTES PROCEDURES" MACHINERY OF THE CANADIAN LABOUR CONGRESS. I ENCLOSE HERewith FOR YOUR INFORMATION THE FOLLOWING:-

1. PUBLICATION ENTITLED "THE AFL-CIO INTERNAL DISPUTES PLAN". YOUR ATTENTION IS INVITED TO THE EDITOR'S NOTE WHICH APPEARS AT THE TOP OF PAGE 3 WHICH CLEARLY SETS OUT THAT "...CASES INVOLVING CANADIAN LOCALS OF AFL-CIO AFFILIATES WILL IN THE FUTURE BE PROCESSED THROUGH THE DISPUTES MACHINERY OF THE CANADIAN LABOUR CONGRESS".
2. CONSTITUTION OF THE CANADIAN LABOUR CONGRESS.

I WOULD ASK THE BOARD TO NOTE PARTICULARLY ARTICLE IV OF THE CONSTITUTION WHICH DEALS WITH "DISPUTES PROCEDURES". YOU WILL NOTE THAT THE PROCEDURE WHICH IS TO BE FOLLOWED IS CLEARLY SET FORTH IN ARTICLE IV OF THE CLC'S CONSTITUTION.

4. BY LETTER DATED SEPTEMBER 19TH, 1968, THE REGISTRAR ENCLOSED A COPY OF THE ABOVE REFERRED TO LETTER TO THE REPRESENTATIVES OF THE COMPLAINANT AND TO COUNSEL FOR THE RESPONDENT INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS - LOCAL No. 71 (HEREINAFTER REFERRED TO AS THE PULP WORKERS LOCAL 71). THE REGISTRAR ADVISED THESE PARTIES THAT THE EXHIBITS WHICH ACCOMPANIED THE LETTER FROM COUNSEL FOR THE PAPER MAKERS LOCAL 135 WERE ON FILE WITH THE BOARD AND AVAILABLE FOR INSPECTION AT ANY TIME DURING WHICH THE BOARD'S OFFICES WERE OPEN. THE REGISTRAR REQUESTED THAT THE COMPLAINANT AND THE RESPONDENT PULP WORKERS LOCAL 71 SUBMIT ANY REPRESENTATIONS THEY WISHED TO MAKE WITH RESPECT TO THE ABOVE MENTIONED LETTER ON OR BEFORE SEPTEMBER 30TH, 1968.

5. THE REPRESENTATIVE OF THE COMPLAINANT REPLIED TO THE REGISTRAR BY A LETTER DATED SEPTEMBER 27TH, 1968. THE LETTER, HOWEVER, CONTAINS NO REPRESENTATIONS RELATING TO THE ISSUE OF THE BOARD'S JURISDICTION IN THIS MATTER. NO REPRESENTATIONS WERE RECEIVED FROM COUNSEL FOR THE PULP WORKERS LOCAL 71. ALL PARTIES, HOWEVER, HAD FULL OPPORTUNITY TO MAKE SUBMISSIONS RELATING TO THE CHALLENGE MADE BY THE PAPER MAKERS LOCAL 135.

6. COUNSEL FOR THE PAPER MAKERS LOCAL 135 ENCLOSED A PUBLICATION WITH HIS LETTER OF SEPTEMBER 18TH, 1968, WHICH HE DESCRIBES AS BEING ENTITLED "THE AFL-CIO INTERNAL DISPUTES PLAN". IN FACT, THE FULL TITLE OF THE PUBLICATION IS "INDEX DIGEST OF DETERMINATIONS OF THE IMPARTIAL UMPIRE UNDER THE AFL-CIO INTERNAL DISPUTES PLAN 1964-1965". THE CONTENT OF THE PUBLICATION IS EXACTLY AS DESCRIBED BY THE TITLE, THAT IS, IT IS A DIGEST OF CITED DECISIONS MADE BY THE IMPARTIAL UMPIRE. THE PURPORTED "INTERNATL DISPUTES PLAN" UNDER WHICH THE UMPIRE PRESUMABLY IS AUTHORIZED TO ACT IS NOT IN EVIDENCE BEFORE THE BOARD.

7. WE WOULD MENTION THAT ON PAGE 3 OF THE PUBLICATION THERE APPEARS THE FOLLOWING STATEMENT:

[EDITOR'S NOTE: BY ACTION OF THE EXECUTIVE COUNCIL TAKEN ON MAY 19, 1964, CASES INVOLVING CANADIAN LOCALS OF AFL-CIO AFFILIATES WILL IN THE FUTURE BE PROCESSED THROUGH THE DISPUTES MACHINERY OF THE CANADIAN LABOUR CONGRESS.]

THERE IS NOTHING ON FILE WITH THE BOARD TO INDICATE WHAT ACTION WAS TAKEN BY THE EXECUTIVE COUNCIL TO HAVE CASES INVOLVING CANADIAN LOCALS PROCESSED THROUGH THE DISPUTES MACHINERY OF THE CANADIAN LABOUR CONGRESS. THERE DOES APPEAR TO BE MACHINERY ESTABLISHED BY ARTICLE IV OF THE CONSTITUTION OF THE CANADIAN LABOUR CONGRESS, WHICH WAS FILED WITH THE BOARD, FOR THE SETTLEMENT OF WORK ASSIGNMENT DISPUTES. THERE IS, HOWEVER, NO EVIDENCE UPON WHICH THE BOARD IS PREPARED TO MAKE A FINDING THAT THE EXECUTIVE COUNCIL OF THE AFL-CIO DELEGATED THE DETERMINATION OF WORK ASSIGNMENT DISPUTES INVOLVING CANADIAN LOCALS TO THE CLC. EVEN ASSUMING THAT SUCH EVIDENCE WAS BEFORE THE BOARD, IT STILL MIGHT BE ARGUABLE AS TO WHETHER SUCH AN ARRANGEMENT FALLS WITHIN THE PURVIEW OF ARTICLE 4 OF THE COLLECTIVE AGREEMENT IN EFFECT AMONG THE PARTIES TO THIS PROCEEDING. THE BOARD, HOWEVER, IS NOT CALLED UPON TO DECIDE THIS MATTER.

8. BASED ON THE EVIDENCE BEFORE IT, THE BOARD FINDS THAT THERE IS NO TRIBUNAL PROVIDED FOR IN THE COLLECTIVE AGREEMENT OF MAY 1ST, 1965 WITH AUTHORITY TO RESOLVE THE INSTANT WORK ASSIGNMENT DISPUTE. THE BOARD ACCORDINGLY FURTHER FINDS THAT SUBSECTION (8) OF SECTION 66 IS NOT APPLICABLE AND DOES NOT DEPRIVE THE BOARD OF THE JURISDICTION BESTOWED ON IT BY SUBSECTION (1) OF SECTION 66.

9. THE BOARD THEREFORE DIRECTS THAT THE REGISTRAR LIST THIS MATTER FOR CONTINUATION OF HEARING ON THE MERITS OF THE WORK ASSIGNMENT IN DISPUTE.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -

CERTIFICATION

14177-67-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED (RESPONDENT) V. A. & M. EMPLOYEES' ASSOCIATION (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: J.B. WATERMAN, DANIEL DEAN AND WILLIAM FRASER FOR THE APPLICANT, A. J. CLARK AND K. L. HAMER FOR THE RESPONDENT, WILLIAM J. HEMMERICK, Q.C., FOR THE INTERVENER.

DECISION OF THE BOARD: OCTOBER 29, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHEREIN THE BOARD DIRECTED THAT A PRE-HEARING REPRESENTATION VOTE BE TAKEN AND THE EMPLOYEES IN THE BARGAINING UNIT WERE ASKED TO INDICATE WHETHER OR NOT THEY WISHED TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.
2. THE REGISTRAR, IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE, NOTIFIED THE PARTIES OF THE IMPOSITION OF THE 72-HOUR QUIET PERIOD PRECEDING THE TAKING OF THE VOTE. THE REGISTRAR DIRECTED THAT "ALL INTERESTED PERSONS REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT OF FRIDAY, THE 3RD DAY OF MAY, 1968, UNTIL THE VOTE IS TAKEN." THE VOTE IN THIS MATTER WAS TAKEN ON TUESDAY, MAY 7TH, 1968.
3. ON THE TAKING OF THE REPRESENTATION VOTE THERE WERE 76 NAMES OF PERSONS ON THE REVISED VOTERS' LIST OF WHOM 75 PERSONS CAST BALLOTS. THE BALLOTS OF 38 PERSONS WERE MARKED IN FAVOUR OF THE APPLICANT, 36 WERE MARKED AGAINST THE APPLICANT, AND ONE BALLOT WAS SPOILED. SINCE EXACTLY HALF OF THE PERSONS ON THE REVISED VOTERS' LIST VOTED IN FAVOUR OF THE APPLICANT, THE APPLICANT THEREFORE FAILED TO RECEIVE A MAJORITY OF VOTES IN ITS FAVOUR.
4. FOLLOWING THE TAKING OF THE REPRESENTATION VOTE, THE APPLICANT FILED A NOTICE OF OBJECTION TO THE VOTE WITHIN THE TIME REQUIRED AND REQUESTED THAT A NEW VOTE BE TAKEN. THIS MATTER WAS LISTED FOR HEARING TO HEAR THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES CONCERNING THE APPLICANT'S OBJECTIONS.

5. THE APPLICANT'S OBJECTIONS WERE BASED ON TWO ITEMS OF PROPAGANDA ISSUED BY THE INTERVENER. THE FIRST GROUND OF COMPLAINT WAS A PAMPHLET ISSUED BY THE INTERVENER AND DISTRIBUTED BY HAND ON FRIDAY, MAY 3RD, PRIOR TO THE ONSET OF THE QUIET PERIOD. THE APPLICANT TOOK EXCEPTION TO THE FOLLOWING PARAGRAPH WHICH WAS INCLUDED IN THE PAMPHLET:

WE UNDERSTAND THAT THE PARENT COMPANY IS READY TO NEGOTIATE A NEW CONTRACT WITH THE MACHINISTS AND IF THIS CANNOT BE SETTLED, A STRIKE WILL BE CALLED. YOU WILL THEN BE CALLED UPON TO HELP BY STRIKING IN SYMPATHY. DO YOU WANT THIS? AT EVERY TURN, YOU FIND THAT THE MACHINISTS ARE NOT GETTING RESULTS.

6. IT WAS THE APPLICANT'S POSITION THAT THIS PARAGRAPH ACCUSED THE APPLICANT OF BEING A TRADE UNION WHICH WOULD NOT OBEY THE LAWS OF ONTARIO AND IN PARTICULAR THAT PORTION OF THE ONTARIO LABOUR RELATIONS ACT WHICH PROHIBITS UNLAWFUL STRIKES. WHILE THE OFFENDING PARAGRAPH MAY BE SUBJECT TO THE INTERPRETATION THAT THE APPLICANT WOULD ENGAGE IN AN UNLAWFUL STRIKE, WE ARE NOT SATISFIED THAT THIS IS A NECESSARY IMPLICATION. HOWEVER THAT MAY BE, PARTIES INVOLVED IN REPRESENTATION VOTES CONDUCTED BY THE BOARD OFTEN ENGAGE IN PROPAGANDA AND ELECTIONEERING WHICH CONTAIN PREDICTIONS OF ONE KIND OR ANOTHER AND THIS HAS BECOME FAIR GAME. SO LONG AS THE PROPAGANDA AND ELECTIONEERING DO NOT TEND TO DEPRIVE THE VOTERS OF THEIR FREEDOM OF CHOICE OR THEIR ABILITY TO FREELY EXPRESS THEIR TRUE WISHES IN A SECRET BALLOT, THE BOARD WILL NOT INTERFERE WITH THE NATURE OF THE PROPAGANDA AND ELECTIONEERING. IT IS ONE THING TO ACCUSE A PARTY OF HAVING PERFORMED AN ILLEGAL ACT AND QUITE ANOTHER THING TO PREDICT SOMETHING WHICH IS IMPOSSIBLE OF PROOF. THE FORMER MAY BE ACCEPTED AS FACT. THE LATTER IS READILY RECOGNIZABLE AS NORMAL ELECTION PROPAGANDA.

7. ON THE FACTS OF THIS CASE, WE ARE SATISFIED THAT THE AVERAGE EMPLOYEE WOULD BE ABLE TO RECOGNIZE THE PROPAGANDA PUBLISHED BY THE INTERVENER FOR WHAT IT IS. THE BOARD THEREFORE FINDS THAT THERE IS NO REASON TO UPSET THE RESULT OF THE REPRESENTATION VOTE CONDUCTED IN THIS CASE ON THE BASIS OF THE PROPAGANDA PUBLISHED BY THE INTERVENER, WHICH IS QUOTED, IN PART, ABOVE.

8. THE SECOND GROUND OF COMPLAINT IS THAT THE INTERVENER CAUSED A PROPAGANDA LEAFLET TO BE MAILED BY FIRST CLASS MAIL ON MAY 2ND, WHICH WAS NOT DELIVERED BY THE POST OFFICE, AT LEAST IN ONE INSTANCE, UNTIL AFTER THE ONSET OF THE QUIET PERIOD, CONTRARY TO THE REGISTRAR'S INSTRUCTIONS.

9. THE EVIDENCE ESTABLISHED THAT THE PAMPHLET WAS MAILED BY FIRST CLASS MAIL FROM A POSTAL STATION IN SCARBOROUGH AT APPROXIMATELY 1:00 P.M. ON THURSDAY, MAY 2ND. WHILE IT WAS RECEIVED BY THE POST OFFICE AT THAT TIME, IT WAS NOT PROCESSED THROUGH THE POST OFFICE UNTIL APPROXIMATELY 6:30 P.M. ON THAT DATE, WHICH TIME APPEARS ON THE POST OFFICE STAMP WHICH CANCELLED THE POSTAGE STAMP ON THE ENVELOPE OF A LETTER WHICH WAS RECEIVED BY ONE EMPLOYEE ON MONDAY, MAY 6TH. WHILE A GOOD PROPORTION OF THE RESPONDENT'S EMPLOYEES RESIDE IN THE BOROUGH OF SCARBOROUGH, OTHERS RESIDE IN TORONTO AND SOME ALSO RESIDE OUTSIDE OF THE METROPOLITAN TORONTO AREA.

10. MR. MCCOOL, ONE OF THE RESPONDENT'S EMPLOYEES, RESIDED AT THE Y.M.C.A. ON BROADVIEW AVENUE, TORONTO. MR. MCCOOL TESTIFIED THAT ON MONDAY, MAY 6TH, HE RECEIVED A PAMPHLET FROM THE INTERVENER WHICH WAS ENCLOSED IN AN ENVELOPE ADDRESSED TO HIM AT THE Y.M.C.A., BROADVIEW AVENUE, TORONTO, ONTARIO. THE INTERVENER ACKNOWLEDGED THAT THIS WAS ONE OF THE PAMPHLETS MAILED BY IT ON MAY 2ND. MR. MCCOOL TESTIFIED THAT ALTHOUGH HE RECEIVED MAIL ON MAY 3RD AND WHILE IT WAS HIS EXPERIENCE THAT MAIL ADDRESSED TO HIM AT THE Y.M.C.A. WAS DELIVERED BY THE STAFF TO HIS ROOM THE SAME DAY THAT IT WAS DELIVERED BY THE POST OFFICE, THE LETTER IN QUESTION WAS NOT RECEIVED BY HIM UNTIL MONDAY, MAY 6TH.

11. THE INTERVENER CALLED EVIDENCE WHICH ESTABLISHED THAT SIMILAR PAMPHLETS WERE MAILED TO ALL OF THE RESPONDENT'S EMPLOYEES ON MAY 2ND BY FIRST CLASS MAIL. THE CLERK IN THE POST OFFICE APPARENTLY ADVISED THE OFFICIAL OF THE INTERVENER WHO MAILED THE PAMPHLETS THAT THEY WOULD ALL BE DELIVERED THE FOLLOWING DAY.

12. THERE WAS ALSO TESTIMONY THAT LETTERS MAILED WITHIN THE METROPOLITAN TORONTO AREA AT TIMES TAKE MORE THAN ONE DAY FOR DELIVERY.

13. IT WAS ARGUED ON BEHALF OF THE INTERVENER THAT THE INTERVENER COULD REASONABLY EXPECT THAT LETTERS MAILED AS DESCRIBED ABOVE WOULD BE DELIVERED THE FOLLOWING DAY PRIOR TO THE ONSET OF THE QUIET PERIOD AND THAT THEREFORE THE FACT THAT ONE OF THE LETTERS WAS NOT DELIVERED UNTIL AFTER THE COMMENCEMENT OF THE QUIET PERIOD SHOULD NOT BE CAUSE TO UPSET THE RESULT OF THE REPRESENTATION VOTE IN THIS CASE.

14. THE BOARD HAS REVIEWED THE CASES IN WHICH THE PROBLEM OF AN ALLEGED VIOLATION OF THE QUIET PERIOD HAS BEEN DEALT WITH. MOST OF THESE CASES ARE CITED IN THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED CASE, 62 C.L.L.C. ¶16,257. IT IS READILY APPARENT THAT THE MANNER IN WHICH THE BOARD HAS ENFORCED THE

REGISTRAR'S DIRECTION WITH RESPECT TO THE QUIET PERIOD HAS CHANGED OR BEEN MODIFIED AS A RESULT OF THE BOARD'S EXPERIENCE. INITIALLY THE BOARD TOOK THE POSITION THAT THE REGISTRAR'S DIRECTION IMPOSED AN ABSOLUTE PROHIBITION AGAINST PROPAGANDA AND ELECTIONEERING. SEE ROGERS MAJESTIC LTD. CASE, 48 C.L.L.C. ¶16,517. IN THE CYANAMID OF CANADA, LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1959, P. 176, AND THE WILCOLATOR (CANADA) LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1959, P. 245, THE BOARD, IN DEALING WITH THE CONDUCT OF THE PARTY ALLEGED TO HAVE BREACHED THE QUIET PERIOD, SPOKE OF THE "HIGH DEGREE OF PROBABILITY" THAT SUCH CONDUCT WOULD INFRINGE THE QUIET PERIOD RATHER THAN APPLYING THE ABSOLUTE PROHIBITION RULE. THIS POSITION WAS AGAIN ALTERED BY THE BOARD IN THE AUTOMATIC ELECTRIC (CANADA) LIMITED CASE, 62 C.L.L.C. ¶16,226, WHEN THE BOARD STATED THAT THE IMPOSITION OF THE QUIET PERIOD IMPOSED A "HEAVY ONUS" ON THE PARTIES TO SEE THAT THE SILENT PERIOD WAS NOT INFRINGED.

15. IN THE INTERNATIONAL NICKEL COMPANY OF CANADA, LIMITED CASE, REFERRED TO ABOVE, THE BOARD APPLIED THE PRINCIPLE THAT "THERE IS NOT AN ABSOLUTE PROHIBITION THE INFRINGEMENT OF WHICH, WITTINGLY OR UNWITTINGLY, WILL VITIATE A REPRESENTATION VOTE, BUT RATHER THAT THERE IS A HEAVY ONUS ON THE PARTIES TO SEE THAT THE PROHIBITION IS NOT INFRINGED." HOWEVER, THE BOARD FURTHER CLARIFIED ITS POSITION IN THAT CASE WHEN THE BOARD APPLIED THE TEST OF "REASONABLE AND FORESEEABLE POSSIBILITY". AGAIN, IN THE WATERLOO COUNTY HEALTH ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, MAY 1965, P. 121, THE EVIDENCE ESTABLISHED THAT ELECTIONEERING MATERIAL WAS RECEIVED DURING THE SILENT PERIOD. EVIDENCE WAS CALLED BY THE SENDER OF THE PROPAGANDA TO SHOW THAT FIRST CLASS MAIL FROM LONDON TO KITCHENER, ONTARIO WOULD HAVE BEEN DELIVERED THE DAY FOLLOWING THE DATE ON WHICH IT WAS MAILED IF IT HAD NOT BEEN FOR A SNOWSTORM. IN THAT CASE NO NEW VOTE WAS ORDERED.

16. THE LAST OF THE SERIES OF CASES DEALING WITH THE QUESTION OF THE INFRINGEMENT OF THE QUIET PERIOD BY MAIL APPEARS TO BE THE KRALINATOR FILTERS LIMITED CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1966, P. 312. IN THAT CASE THE BOARD WAS SEIZED WITH FACTS WHICH ARE ON ALL FOURS WITH THE FACTS OF THE INSTANT CASE. IN THE KRALINATOR CASE THE REGISTRAR HAD DIRECTED THAT INTERESTED PERSONS REFRAIN AND DESIST FROM PROPAGANDA AND ELECTIONEERING FROM MIDNIGHT ON FRIDAY, THE 15TH DAY OF JULY, 1966 UNTIL AFTER THE VOTE HAD BEEN TAKEN. HOWEVER, FIVE EMPLOYEES RECEIVED ELECTIONEERING PROPAGANDA FROM THE NATIONAL COUNCIL OF CANADIAN LABOUR, AN INTERESTED PARTY, IN THE MAIL ON SATURDAY, JULY 16TH, THIS BEING WITHIN THE SILENT PERIOD ESTABLISHED BY THE REGISTRAR.

17. THE EVIDENCE UPON WHICH THE MAJORITY OF THE BOARD RELIED IN THAT CASE IS AS FOLLOWS:

3. MR. THOMAS DOODY, FIELD REPRESENTATIVE OF THE NATIONAL COUNCIL OF CANADIAN LABOUR, GAVE EVIDENCE THAT HIS ORGANIZATION HAD MAILED PROPAGANDA MATERIAL TO SOME 167 EMPLOYEES OF KRALINATOR, INCLUDING THE FIVE WITNESSES. HE STATED THAT THE ENVELOPES CONTAINING THE MATERIAL WERE STAMPED WITH 5¢ STAMPS TO ENSURE CARRIAGE BY FIRST CLASS MAIL AND TIED IN BUNDLES ACCORDING TO DESTINATION (EMPLOYEES OF THE COMPANY LIVE IN THE PRESTON, GALT AND KITCHENER AREAS) IN ORDER TO EXPEDITE SORTING, AND WERE MAILED FROM POSTAL STATION "U" IN TORONTO AT 4:30 P.M. ON THURSDAY, JULY 14TH, 1966.

4. DOODY TESTIFIED THAT PRIOR TO MAILING THE LETTERS, HE HAD ASCERTAINED FROM OFFICIALS AT POSTAL STATION "U" THAT LETTERS MAILED BEFORE 6:00 P.M. ON JULY 14TH WOULD BE DELIVERED IN THE PRESTON, GALT AND KITCHENER AREAS ON JULY 15TH. HE WAS UNABLE TO OFFER ANY EXPLANATION AS TO WHY THE CANCELLATION STAMPS BORE THE INFORMATION REFERRED TO ABOVE.

5. THE INTERVENER CALLED A MR. CLARENCE SWITZER, WHO HAS BEEN A POSTAL INSPECTOR IN TORONTO FOR SOME TWENTY YEARS. HIS EVIDENCE IS THAT THE TIME AND DATE OF CANCELLATION HAVE REFERENCE TO WHEN THE MAIL WAS PROCESSED AT THE MAIN TORONTO POST OFFICE AND DO NOT INDICATE THE TIME AT WHICH IT WAS POSTED IN THE BRANCH POST OFFICE. MAIL ARRIVING AT THE MAIN POST OFFICE AT 5:15 P.M. MIGHT WELL NOT BE PROCESSED UNTIL 1:00 A.M. OF THE FOLLOWING DAY AND WOULD BEAR THE DATE OF THE DAY IT WAS PROCESSED. BUNDLES OF ENVELOPES STAMPED WITH AFFIXED RATHER THAN PRINTED STAMPS HAVE TO BE UNTIED FOR CANCELLATION AND IT FREQUENTLY HAPPENS THAT SOME OF THE BUNDLE GETS LEFT BEHIND. THE POST OFFICE GETS COMPLAINTS ABOUT THIS SORT OF THING. NORMALLY LETTERS MAILED AT POSTAL STATION "U" SHOULD BE DELIVERED ON THE FOLLOWING DAY IN THE AREAS IN QUESTION.

18. ON THE EVIDENCE THE BOARD FOUND THAT IT WAS SATISFIED THAT DOODY TOOK "REASONABLE PRECAUTIONS" AGAINST VIOLATION OF THE SILENT PERIOD, AND THAT THE VIOLATION THAT DID OCCUR WAS NOT

ONE WHICH COULD HAVE REASONABLY BEEN FORESEEN. THE BOARD ACCORDINGLY FOUND THAT THERE WAS NO GROUND FOR HOLDING THAT THE REPRESENTATION VOTE TAKEN IN THAT MATTER SHOULD BE DECLARED VOID.

19. SINCE THE EVIDENCE IN THIS CASE ESTABLISHED LESS GROUNDS FOR COMPLAINT THAN THE EVIDENCE IN THE KRALINATOR CASE AND SINCE THE EVIDENCE FAILED TO ESTABLISH THAT THE INTERVENER IN THIS CASE HAD DELIBERATELY INFRINGED THE REGISTRAR'S DIRECTION OR THAT THE INTERVENER'S CONDUCT EXHIBITED A WANTON DISREGARD FOR THE ONSET OF THE QUIET PERIOD, AND HAVING REGARD TO THE BOARD'S PRACTICE AS IT HAS DEVELOPED, WE MUST FIND THAT THE APPLICANT HAS FAILED TO SATISFY THE BOARD THAT THE PRE-HEARING REPRESENTATION VOTE TAKEN IN THIS MATTER SHOULD BE SET ASIDE.

20. THE REQUEST OF THE APPLICANT THAT A NEW REPRESENTATION VOTE SHOULD BE TAKEN IS THEREFORE DENIED.

14709-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. KNIGHT SECURITY GUARDS LIMITED (RESPONDENT).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER H.F. IRWIN:

OCTOBER 7, 1968.

1. THE APPLICANT BY ITS LETTER OF OCTOBER 1ST, 1968 HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF SEPTEMBER 17TH, 1968, IN THIS MATTER. THE APPLICANT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER. PRIOR TO ARRIVING AT ITS DECISION OF SEPTEMBER 17TH, 1968, THE BOARD GAVE FULL CONSIDERATION TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES WITH RESPECT TO THE APPLICATION OF SECTION 9 OF THE LABOUR RELATIONS ACT UPON WHICH THE BOARD'S DECISION IS BASED. SINCE FULL OPPORTUNITY WAS GIVEN TO THE PARTIES TO CALL WHATEVER EVIDENCE WAS AVAILABLE TO THEM AND TO MAKE ALL THE REPRESENTATIONS THEY WISHED TO MAKE AT THE HEARING IN THIS MATTER, THE BOARD IS OF OPINION THAT NO FURTHER OPPORTUNITY SHOULD BE GIVEN TO THE PARTIES TO ARGUE THE CASE FURTHER.

2. THE BOARD THEREFORE DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF SEPTEMBER 17TH, 1968 IN THIS MATTER AND THE REQUEST OF THE APPLICANT IS THEREFORE DENIED.

DECISION OF BOARD MEMBER O. HODGES:

OCTOBER 7, 1968.

WITHOUT DEROGATING FROM MY DISSENT DATED SEPTEMBER 17TH, 1968, I CONCUR IN THE FINDING OF THE MAJORITY AS SET OUT ABOVE THAT THE REQUEST OF THE APPLICANT THAT THE BOARD RECONSIDER ITS DECISION OF SEPTEMBER 17TH, 1968 SHOULD BE DENIED.

14739-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. RIDGETOWN DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND F. W. MURRAY.

APPEARANCES AT THE HEARING: E. B. PARKER AND F. PYKE FOR THE APPLICANT, AND NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 21, 1968.

1. THE RESPONDENT, BY LETTER DATED OCTOBER 8TH, 1968, REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF JULY 19TH, 1968.
2. THE CONTRACT BETWEEN THE RESPONDENT AND ARCHIE MCLEAN REFERRED TO IN THE ABOVE-NOTED LETTER WAS BEFORE THE BOARD, AS WAS THE WRITTEN SUBMISSION OF THE RESPONDENT WITH RESPECT THERETO, AT THE TIME IT MADE THE DECISION OF JULY 19TH, 1968, AND BOTH RECEIVED FULL CONSIDERATION BY THE BOARD PRIOR TO THE MAKING OF THE DECISION.
3. THE RESPONDENT NOW SEEKS RECONSIDERATION ON THE BASIS OF A WRITTEN CONTRACT ALLEGED TO HAVE BEEN MADE ON JUNE 25TH, 1968, THE TERMINAL DATE OF THE APPLICATION, BETWEEN IT AND GEORGE SHOEMAKER, SAID TO BE SIMILAR TO THE WRITTEN AGREEMENT BETWEEN IT AND ARCHIE MCLEAN. THE RESPONDENT ALSO REQUESTS AN OPPORTUNITY TO ADDUCE EVIDENCE OF CIRCUMSTANCES PRIOR TO, AT THE TIME OF, AND SUBSEQUENT TO, THE APPLICATION.
4. IN THE OPINION OF THE BOARD THE RESPONDENT IS REQUESTING LEAVE TO RE-PRESENT THE WHOLE MATTER WITH THE ADDITION OF EVIDENCE OF MATTERS SAID TO HAVE ARISEN AFTER THE DATE OF THE APPLICATION.
5. THE RESPONDENT DID NOT APPEAR AT THE HEARING WHEN IT WOULD HAVE HAD FULL OPPORTUNITY TO INTRODUCE WHATEVER EVIDENCE IT HAD RELEVANT TO THE ISSUES. THE BOARD CAN DISCOVER NO REASON IN THE REQUEST WHICH WOULD PERSUADE IT TO RECONSIDER ITS DECISION OF JULY 19TH, 1968, AND THE REQUEST IS DENIED.

14744-68-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION 397 (APPLICANT) V. G.M. & H.O. HOLMES LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS F. W. MURRAY AND P. J. O'KEEFE.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND F. W. MURRAY,

BOARD MEMBER: OCTOBER 30, 1968.

1. BY LETTER DATED SEPTEMBER 26TH, 1968, THE RESPONDENT REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED SEPTEMBER 17TH, 1968 AND SET OUT THEREIN SEVERAL AREAS OF ISSUE. SUBSEQUENTLY BY LETTER DATED OCTOBER 11TH, 1968, THE RESPONDENT HAS CONFINED ITS REQUEST TO THE BOARD TO RECONSIDER ITS DESCRIPTION OF THE BARGAINING UNIT. IN THIS REGARD THE BOARD HAS ALSO RECEIVED AND CONSIDERED LETTERS FROM THE APPLICANT DATED SEPTEMBER 30TH AND OCTOBER 15TH, 1968.

2. IT HAS BEEN THE BOARD'S USUAL PRACTICE IN CASES OF THIS NATURE TO DESCRIBE THE BARGAINING UNIT AS SET OUT IN ITS DECISION DATED SEPTEMBER 17TH, 1968. HOWEVER, THE BOARD HAS NOT ALWAYS RECEIVED FOR ITS CONSIDERATION REPRESENTATIONS BY THE RESPONDENT CONCERNED AS TO THE APPROPRIATE SUPERVISORY CLASSIFICATIONS FOR EXCLUSION FROM THE UNIT. MORE PARTICULARLY WE REFER TO THE RESPONDENT'S SUBMISSION THAT THE EXCLUSION OF THE CLASSIFICATION OF "NON-WORKING FOREMAN" IN THIS INSTANCE RESULTS IN THE BOARD EXCLUDING FROM A BARGAINING UNIT A CATEGORY WHICH DID NOT EXIST AS OF THE DATE OF THE APPLICATION NOR WILL IT EXIST IN THE FUTURE. THE BOARD EXCLUDED FROM THE BARGAINING UNIT BY NAME THOSE PERSONS CLASSIFIED AS WORKING FOREMEN AS THEY EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT. THERE ARE, IT APPEARS, NO OTHER CLASSIFICATIONS AT THIS LEVEL OF MANAGEMENT.

3. IN THE HUSBAND TRANSPORT CASE, BOARD FILE NO. 735-60-R, THE FOLLOWING PRINCIPLE WAS ESTABLISHED BY THE BOARD:

WHERE A PARTY SEEKS TO EXCLUDE FROM A BARGAINING UNIT PERSONS IN A MANAGERIAL CLASSIFICATION THAT DOES NOT EXIST AT THE TIME OF THE MAKING OF THE APPLICATION, SUCH CLASSIFICATION IS NOT TO BE EXCLUDED IN THE DESCRIPTION OF THE BARGAINING UNIT. THE LINE OF SUPERVISION IS TO BE DRAWN AT THE LOWEST EXISTING LEVEL OF PERSONS EXERCISING MANAGERIAL FUNCTIONS.

IN THE INSTANT MATTER THEREFORE, THE LOWEST LEVEL OF PERSONS EXERCISING MANAGEMENT FUNCTIONS ARE THOSE PERSONS CLASSIFIED

AS WORKING FOREMEN. CONSEQUENTLY, IN ACCORDANCE WITH THE BOARD'S STATED POLICY IN THIS RESPECT AND HAVING REGARD TO THE FACT THAT THERE ARE NO OTHER CLASSIFICATIONS OF FOREMEN EMPLOYED BY THE RESPONDENT AND THAT THIS APPLICATION IS NOT MADE UNDER THE CONSTRUCTION INDUSTRY PROVISIONS OF THE ACT, WE MUST CONCLUDE FROM THE REPRESENTATIONS OF THE PARTIES THAT IN THE CIRCUMSTANCES OF THIS CASE THE PROPER MANAGEMENT EXCLUSION SHOULD BE FOREMAN AND NOT AS DESCRIBED IN THE BOARD'S PREVIOUS DECISION.

4. ACCORDINGLY, THE BOARD GRANTS THE RESPONDENT'S REQUEST FOR ITS RECONSIDERATION OF THE DESCRIPTION OF THE BARGAINING UNIT AND DECLARES THAT PARAGRAPH TWO OF ITS DECISION DATED SEPTEMBER 17TH, 1968 IS REVOKED AND THE FOLLOWING SHALL BE SUBSTITUTED THEREFOR:

2. THE BOARD HAS CONSIDERED THE SPECIAL CIRCUMSTANCES OF THIS CASE INCLUDING THE JOB-SITE NATURE OF THE WORK INVOLVED AND ACCORDINGLY THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF PORT ARTHUR, ENGAGED IN THE APPLICATION OF ROOFING MATERIAL (OTHER THAN WOOD SHINGLES AND METAL) SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS AND EMPLOYEES OF THE RESPONDENT COVERED UNDER SUBSISTING COLLECTIVE AGREEMENTS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

IN ALL OTHER RESPECTS THE BOARD CONFIRMS ITS DECISION DATED SEPTEMBER 17TH, 1968.

5. THE MATTER IS REFERRED BACK TO THE REGISTRAR.

DECISION OF BOARD MEMBER P. J. O'KEEFFE:

OCTOBER 30, 1968.

I DISSENT. IN VIEW OF THE HISTORY OF THE APPLICANT IN ITS APPLICATIONS FOR CERTIFICATION BEFORE THE BOARD, I WOULD NOT HAVE AMENDED THE DESCRIPTION OF THE BARGAINING UNIT AS SET OUT IN THE BOARD'S DECISION DATED SEPTEMBER 17TH, 1968. I WOULD THEREFORE, HAVE DENIED THE RESPONDENT'S REQUEST FOR RECONSIDERATION OF THIS MATTER.

14855-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE WALLACEBURG DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
F.W. MURRAY AND O. HODGES.

DECISION OF THE BOARD: OCTOBER 21, 1968.

1. FOLLOWING ITS DECISION DATED AUGUST 6TH, 1968, THE BOARD RECEIVED A LETTER DATED SEPTEMBER 26TH, 1968 FROM THE REPRESENTATIVE OF THE RESPONDENT WHICH CONTAINED CERTAIN SUBMISSIONS WITH RESPECT TO THE BARGAINING UNIT FOUND TO BE APPROPRIATE BY THE BOARD IN THIS MATTER. THE BOARD HAS ALSO CONSIDERED THE REPRESENTATIONS OF THE APPLICANT IN ITS LETTER DATED OCTOBER 9TH, 1968. THE BOARD ASSUMES THAT THE RESPONDENT INTENDED TO REQUEST RECONSIDERATION OF ITS DECISION DATED AUGUST 6TH, 1968.

2. WE POINT OUT THAT IT IS THE BOARD'S STATED POLICY TO DESCRIBE BARGAINING UNITS OF EMPLOYEES OF SCHOOL BOARDS IN THE MANNER AS SET OUT IN ITS DECISION DATED AUGUST 6TH, 1968. TEACHERS AS DEFINED IN THE TEACHING PROFESSION ACT ARE EXCLUDED IN ACCORDANCE WITH SECTION 2(F) OF THE LABOUR RELATIONS ACT. FURTHER, IF THE RESPONDENT EMPLOYED PERSONS WORKING IN THE CAFETERIA AS CAFETERIA STAFF AND HAD EMPLOYEES DRIVING BUSES AS OF THE DATE OF THE APPLICATION, THEY WOULD BE INCLUDED WITHIN THE DESCRIPTION OF THE BARGAINING UNIT DESCRIBED BY THE BOARD IN THIS MATTER.

3. ACCORDINGLY, SINCE THE RESPONDENT HAS NOT ALLEGED EVIDENCE OR ARGUMENTS WHICH WERE NOT AVAILABLE TO IT AT THE HEARING OF THIS MATTER, THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF AUGUST 6TH, 1968 IN THIS MATTER.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - SECTION 65

13998-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT).

- AND -

13939-67-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. NORAK STEEL CONSTRUCTION LTD. (RESPONDENT).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

DECISION OF THE BOARD: OCTOBER 1, 1968.

1. BY LETTER DATED SEPTEMBER 26TH, 1968, COUNSEL FOR THE COMPLAINANT REQUESTS THAT THE BOARD RECONSIDER ITS DECISION OF SEPTEMBER 23RD, 1968, WHEREIN THE BOARD DENIED THE REQUEST OF THE COMPLAINANT TO WITHDRAW ITS MOTION OF FEBRUARY 26TH, 1968 AND THEREBY NULLIFY THE BOARD'S DECISION OF SEPTEMBER 13TH, 1968.

2. IN SUPPORT OF HIS MOST RECENT REQUEST, COUNSEL FOR THE COMPLAINANT SUBMITS THAT HE FILED A NEW COMPLAINT ON FEBRUARY 26TH, 1968 PURSUANT TO SUBSECTION (6) OF SECTION 65 AND THAT HE WAS NOT MAKING A MOTION RELATING TO THE COMPLAINT FILED ON NOVEMBER 29TH, 1967 (BOARD FILE No. 13939-67-U) AND THE COMPLAINT FILED ON DECEMBER 20TH, 1967 (BOARD FILE No. 13998-67-U).

3. SUBSECTION (6) OF SECTION 65 READS:

WHERE THE MATTER COMPLAINED OF HAS BEEN SETTLED, WHETHER THROUGH THE ENDEAVOURS OF THE FIELD OFFICER OR OTHERWISE, AND THE TERMS OF THE SETTLEMENT HAVE BEEN PUT IN WRITING AND SIGNED BY THE PARTIES OR THEIR REPRESENTATIVES, THE SETTLEMENT IS BINDING UPON THE PARTIES, THE EMPLOYER OR OTHER PERSON AND THE TRADE UNION WHO HAVE AGREED TO THE SETTLEMENT AND SHALL BE COMPLIED WITH ACCORDING TO ITS TERMS, AND A COMPLAINT THAT THE EMPLOYER OR OTHER PERSON OR THE TRADE UNION WHO HAS AGREED TO THE SETTLEMENT HAS NOT COMPLIED WITH THE TERMS OF THE SETTLEMENT SHALL BE DEEMED TO BE A COMPLAINT THAT A PERSON HAS BEEN DEALT WITH CONTRARY TO THE ACT AS TO HIS EMPLOYMENT, OPPORTUNITY FOR EMPLOYMENT OR CONDITIONS OF EMPLOYMENT, AS THE CASE MAY BE.

THE ABOVE SUBSECTION OBVIOUSLY REFERS TO THE SETTLEMENT OF A COMPLAINT MADE UNDER SUBSECTION (1) OF SECTION 65, WHICH HERE WERE THE COMPLAINTS MADE IN NOVEMBER AND DECEMBER OF 1967 REFERRED TO IN PARAGRAPH 2. NO SETTLEMENT WAS MADE OF THESE COMPLAINTS BY THE PARTIES. RATHER THE BOARD MADE A DETERMINATION UPON THEM ON THEIR MERITS BY ITS DECISION OF JANUARY 31ST, 1968. ACCORDINGLY, SUBSECTION (6) WAS NOT AVAILABLE TO THE COMPLAINANT. MOREOVER, THE WORDING OF COUNSEL'S "COMPLAINT" OF FEBRUARY 26TH, 1968 MAKES IT ABUNDANTLY CLEAR THAT HE WAS NOT MAKING A COMPLAINT UNDER SUBSECTION (6). THE OPENING SENTENCE OF THE LATTER "COMPLAINT" READS:

THE COMPLAINANT COMPLAINS THAT THE RESPONDENT HAS NOT COMPLIED WITH THE DECISION OF THE BOARD ON A COMPLAINT MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT.

COUNSEL FOR THE COMPLAINANT THEREUPON ALLEGES IN HIS "COMPLAINT" THAT THE RESPONDENT HAS NOT COMPLIED WITH PARAGRAPH 12 OF THE BOARD'S DECISION OF JANUARY 31ST, 1968, THAT OUTLINES THE BOARD'S DETERMINATION OF THE ACTIONS TO BE TAKEN BY THE RESPONDENT WITH RESPECT TO THE AGGRIEVED PERSON FRANCISCO CARELLI, WHICH INCLUDES REINSTATEMENT AND COMPENSATION. IN THE "COMPLAINT" OF FEBRUARY 26TH, 1968, COUNSEL FOR THE COMPLAINANT REQUESTS THAT THE RESPONDENT BE REQUIRED TO "COMPENSATE THE AGGRIEVED PERSON FOR HIS LOSS OF WAGES AND EMPLOYMENT FROM JANUARY 24, 1968 TO THE DATE OF HIS SECURING ALTERNATIVE EMPLOYMENT". IT IS APPARENT THAT IN MAKING HIS REQUEST COUNSEL WAS MAKING A MOTION AS PROVIDED FOR UNDER ITEM (3) OF PARAGRAPH 12 OF THE BOARD'S DECISION OF JANUARY 31ST, 1968, WHICH READS:

THE RESPONDENT AND THE COMPLAINANT SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY FRANCISCO CARELLI BETWEEN THE DATE OF THE HEARING ON JANUARY 24TH, 1968 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DETERMINATION OR WITHIN SUCH FURTHER PERIOD AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

4. HAVING REGARD TO ALL OF THE ABOVE, THE BOARD FINDS NO REASON TO RECONSIDER ITS DECISION OF SEPTEMBER 23RD, 1968.

5. THE REQUEST OF THE COMPLAINANT, ACCORDINGLY, IS DENIED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

14909-68-R: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (APPLICANT) V. NORRENA ELECTRIC LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

7. HAVING REGARD TO THE EVIDENCE IN THE REPORT THAT ANTHONY DAVID MCKENZIE WAS EMPLOYED AS A JOURNEYMAN ELECTRICIAN AND WAS PAID THE WAGE RATE FOR THAT CLASSIFICATION AS OF THE DATE OF THE MAKING OF THE APPLICATION, THE BOARD RULED AT THE HEARING THAT ANTHONY DAVID MCKENZIE WAS INCLUDED IN THE BARGAINING UNIT. THE BOARD MADE THIS RULING NOTWITHSTANDING THE EVIDENCE THAT MCKENZIE IS NOT CERTIFIED AS A QUALIFIED JOURNEYMAN ELECTRICIAN. (OCTOBER 8, 1968).

15068-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. POL CONSTRUCTION LIMITED (RESPONDENT).

7. WE HAVE CAREFULLY CONSIDERED THE REPORT OF THE EXAMINER DEALING WITH THE DUTIES AND RESPONSIBILITIES OF JAKE BOKHURST AND JITSE DE JONG, TOGETHER WITH THE REPRESENTATIONS OF THE RESPONDENT. IT IS CLEAR THAT BOTH EMPLOYEES SPEND THE VAST MAJORITY OF THEIR TIME WORKING WITH THE TOOLS OF THE TRADE AND, IF FOREMEN, WOULD FALL INTO THE CATEGORY OF WORKING FOREMEN. SUCH PERSONS ARE NORMALLY INCLUDED IN BARGAINING UNITS IN THE CONSTRUCTION INDUSTRY. ON OCCASION WORKING FOREMEN ARE EXCLUDED BUT IN SUCH INSTANCES IT IS BECAUSE THEY HAVE POWER TO AFFECT THE EMPLOYMENT STATUS OF EMPLOYEES WORKING UNDER THEM AND DO IN FACT EXERCISE SUCH POWER AND/OR FURTHER, BECAUSE OF THE OVERALL RESPONSIBILITY WHICH THEY HAVE OVER THE PROJECT. AN EXAMPLE OF THE KIND OF PERSON WE HAVE IN MIND IS TO BE FOUND IN PRE-CON MURRAY LTD., O.L.R.B. MONTHLY REPORT, AUGUST 1965, P. 328. THE DUTIES AND RESPONSIBILITIES OF BOKHURST AND DE JONG FALL FAR SHORT OF THOSE OF THE FOREMAN IN QUESTION IN THE PRE-CON MURRAY CASE AND, IN FACT, ARE NO MORE THAN THOSE NORMALLY POSSESSED BY WORKING FOREMEN NORMALLY INCLUDED IN BARGAINING UNITS. IT IS THEREFORE OUR FINDING THAT BOKHURST AND DE JONG DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE ACCORDINGLY INCLUDED IN THE BARGAINING UNIT.

(OCTOBER 18, 1968).

15160-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. ATCO (QUEBEC) LTEE. (RESPONDENT).

8. THE RESPONDENT BY LETTER DATED OCTOBER 7TH, 1968, WHICH ACCOMPANIED THE REPLY REQUESTED THAT THE BOARD TERMINATE PROCESSING THE APPLICATION FOR CERTIFICATION ON THE GROUNDS THAT THE PROJECT IS NEARING COMPLETION. ALTERNATIVELY THE RESPONDENT REQUESTS A HEARING IN THIS MATTER. THE FACT THAT THE PROJECT IS SOON TO BE COMPLETED HAS NOT BEEN CONSIDERED BY THE BOARD TO BE A VALID REASON FOR NOT ISSUING A CERTIFICATE IF ONE IS OTHERWISE WARRANTED. (SEE D.A. SINCLAIR CONSTRUCTION LIMITED CASE, O.L.R.B. MONTHLY REPORT, FEBRUARY 1968, PAGE 1132.) THE BOARD ACCORDINGLY DOES NOT DEEM IT NECESSARY TO HOLD A HEARING IN THIS CASE.

(OCTOBER 8, 1968).

STATISTICAL TABLES FOR OCTOBER 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	OCTOBER 1968	1ST 7 MONTHS OF 1968-69	FISCAL YEAR 1967-68
I. CERTIFICATION	93	614	578
II. DECLARATION TERMINATING BARGAINING RIGHTS	8	36	54
III. DECLARATION OF SUCCESSOR STATUS	1	10	10
IV. DECLARATION THAT STRIKE UNLAWFUL	2	27	27
V. DECLARATION THAT LOCK- OUT UNLAWFUL	1	4	12
VI. CONSENT TO PROSECUTE	4	59	67
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	17	111	85
VIII. MISCELLANEOUS	<u>2</u>	<u>38</u>	<u>28</u>
TOTAL	<u>128</u>	<u>899</u>	<u>861</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	OCTOBER 1968	1ST 7 MONTHS OF 1968-69	FISCAL YEAR 1967-68
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	91	623	562

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

		NUMBER DISPOSED OF		
		OCTOBER 1968	1ST 7 MTHS OF 1968-69	FISCAL YR. 1967-68
I.	CERTIFICATION	98	629	577
II.	DECLARATION TERMINATING BARGAINING RIGHTS	8	33	41
III.	DECLARATION OF SUCCESSOR STATUS	-	13	8
IV.	DECLARATION THAT STRIKE UNLAWFUL	6	27	29
V.	DECLARATION THAT LOCK- OUT UNLAWFUL	-	3	11
VI.	CONSENT TO PROSECUTE	6	57	57
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	16	122	111
VIII.	MISCELLANEOUS	<u>5</u>	<u>35</u>	<u>50</u>
TOTAL		<u>139</u>	<u>919</u>	<u>884</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>OCTOBER</u> <u>1968</u>	<u>1ST 7 MTHS</u> <u>1968-69</u>	<u>FISCAL YR.</u> <u>1967-68</u>	<u>OCTOBER</u> <u>1968</u>	<u>1ST 7 MTHS</u> <u>1968-69</u>	<u>FISCAL YR.</u> <u>1967-68</u>
I. <u>CERTIFICATION</u>						
GRANTED	67	427	410	2242	13952	4420
DISMISSED	22	148	122	638	4523	8202
WITHDRAWN	<u>9</u>	<u>54</u>	<u>45</u>	<u>192</u>	<u>945</u>	<u>1035</u>
TOTAL	<u>98</u>	<u>629</u>	<u>577</u>	<u>3072</u>	<u>19420</u>	<u>13657</u>
II. <u>TERMINATION</u> <u>OF BARGAINING</u> <u>RIGHTS</u>						
GRANTED	5	18	19	94	405	305
DISMISSED	3	12	20	22	148	737
WITHDRAWN	<u>-</u>	<u>3</u>	<u>2</u>	<u>-</u>	<u>58</u>	<u>41</u>
TOTAL	<u>8</u>	<u>33</u>	<u>41</u>	<u>116</u>	<u>611</u>	<u>1083</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>OCTOBER</u>	<u>1ST 7 MTHS OF FISCAL YR.</u>	
		<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	1	2
	DISMISSED	-	2	3
	WITHDRAWN	<u>6</u>	<u>24</u>	<u>24</u>
	TOTAL	<u>6</u>	<u>27</u>	<u>29</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	-	1	1
	WITHDRAWN	<u>-</u>	<u>2</u>	<u>10</u>
	TOTAL	<u>-</u>	<u>3</u>	<u>11</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	-	9	5
	DISMISSED	-	9	8
	WITHDRAWN	<u>6</u>	<u>39</u>	<u>44</u>
	TOTAL	<u>6</u>	<u>57</u>	<u>57</u>
VI.	<u>COMPLAINT OF UNFAIR</u>			
	<u>PRACTICE IN EMPLOYMENT</u>			
	<u>(SECTION 65)</u>			
	GRANTED	2	7	2
	DISMISSED	3	28	7
	WITHDRAWN	<u>11</u>	<u>87</u>	<u>13</u>
	TOTAL	<u>16</u>	<u>122</u>	<u>22</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY

THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>OCTOBER</u> <u>1968</u>	<u>1ST 7 MTHS</u> <u>1968-69</u>	<u>FISCAL YR.</u> <u>1967-68</u>
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	2	11	10
POST-HEARING VOTE	10	28	27
BALLOTS NOT COUNTED	-	-	-
<u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	2	7
POST-HEARING VOTE	2	19	24
BALLOTS NOT COUNTED	-	1	1
TOTAL	<u>14</u>	<u>61</u>	<u>69</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY

THE ONTARIO LABOUR RELATIONS BOARD

	<u>NUMBER OF VOTES</u>		
	<u>OCTOBER</u> <u>1968</u>	<u>1ST 7 MTHS</u> <u>1968-69</u>	<u>FISCAL YR.</u> <u>1967-68</u>
*RESPONDENT UNION SUCCESSFUL	-	-	4
RESPONDENT UNION UNSUCCESSFUL	<u>3</u>	<u>11</u>	<u>12</u>
TOTAL	<u>3</u>	<u>11</u>	<u>16</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

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15180-68-R: TAYLOR INSTRUMENT COMPANIES OF CANADA LIMITED	823
15219-68-R: SARNIA CONCRETE PRODUCTS LTD.	826
15239-68-R: NORANDA COPPER MILLS LTD., FERGUS DIVISION	828
15312-68-R: PRODUCERS CONTAINER (CANADA) LTD.	829
15315-68-R: NICK MASNEY HOTELS LIMITED	833
14593-68-R: CRANE CANADA LIMITED	835

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING NOVEMBER 1968

BARGAINING AGENTS CERTIFIED DURING NOVEMBER

NO VOTE CONDUCTED

14454-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF WOODSTOCK (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT CITY CLERK, DEPUTY CITY CLERK, CITY TREASURER, DEPUTY CITY TREASURER, CITY ENGINEER, INDUSTRIAL COMMISSIONER, ASSESSMENT COMMISSIONER, DEPUTY ASSESSMENT COMMISSIONER, PARKING METER SUPERVISOR, CONFIDENTIAL SECRETARIES TO THE CITY MANAGER, CITY TREASURER, DEPUTY CITY CLERK, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ALL PERSONS COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 240." (24 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE CONFIDENTIAL SECRETARIES TO THE ASSESSMENT COMMISSIONER, THE DIRECTOR OF RECREATION, PARKS AND COMMUNITY CENTRE, THE DIRECTOR OF SOCIAL SERVICES, THE POTENTIAL TAX COLLECTOR AND ENGINEERING TECHNICIAN ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

(SEE INDEXED ENDORSEMENT PAGE 796).

14823-68-R: NURSES' ASSOCIATION BOROUGH OF NORTH YORK HEALTH DEPARTMENT (APPLICANT) V. THE CORPORATION OF THE BOROUGH OF NORTH YORK (RESPONDENT).

UNIT #1: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND NURSES REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (47 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR." (21 EMPLOYEES IN THE UNIT).

15017-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. MODERN BUILDING CLEANING, DIVISION OF DUSTBANE ENTERPRISES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ST. MARY'S HOSPITAL, AT TIMMINS, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY." (18 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15033-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. RENZETTI CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND CONSTRUCTION LABOURERS ENGAGED IN BUILDING PROJECTS." (21 EMPLOYEES IN THE UNIT).

15083-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. WESTERN CAISSONS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT ITS SHOP AND YARD IN VAUGHAN TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (15 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15104-68-R: THE AUTOMOBILE SALESMEN'S ASSOCIATION (APPLICANT) V. H.D. BRYANT MOTORS LTD. (RESPONDENT).

UNIT: "ALL NEW AND USED MOTOR VEHICLE SALESMEN OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT SALES MANAGERS AND PERSONS ABOVE THE RANK OF SALES MANAGER." (13 EMPLOYEES IN THE UNIT).

15123-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. ARTHUR G. MCKEE & COMPANY OF CANADA, LTD. (RESPONDENT).

UNIT: "ALL INSTRUMENTMEN, RODMEN AND CHAINMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF LAMBTON, SAVE AND EXCEPT PARTY CHIEF AND THOSE ABOVE THE RANK OF PARTY CHIEF." (3 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15140-68-R: INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL, SOFT DRINK AND DISTILLERY WORKERS OF AMERICA, AFL-CIO, CLC (APPLICANT) V. BRANT BEVERAGES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT OR OUT OF ITS PREMISES AT BRANTFORD SAVE AND EXCEPT FOREMEN AND ROUTE MANAGERS, PERSONS ABOVE THE RANKS OF FOREMAN AND ROUTE MANAGER, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR 24 HOURS OR LESS PER WEEK AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (15 EMPLOYEES IN THE UNIT).

15142-68-R: INTERNATIONAL CHEMICAL WORKER'S UNION (APPLICANT) V. UNION GAS COMPANY OF CANADA, LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, HOME SERVICE ADVISOR, HOME ECONOMISTS, SALES REPRESENTATIVES, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (52 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 816).

15143-68-R: BUILDING SERVICE EMPLOYEES' UNION, LOCAL 532 AFFILIATED WITH S.E.I.U. A.F.L., C.I.O., C.L.C. (APPLICANT) V. CENTRAL PARK LODGES OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN HAMILTON, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OR FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

15213-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SENECA STEEL & IRON WORKS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BEAMSVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (22 EMPLOYEES IN THE UNIT).

15214-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC (APPLICANT) V. CENTRAL HOTEL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LUCAN, SAVE AND EXCEPT MANAGERS AND PERSONS ABOVE THE RANK OF MANAGER." (10 EMPLOYEES IN THE UNIT).

15219-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SARNIA CONCRETE PRODUCTS LTD. (RESPONDENT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 1089 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 1089." (8 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 826).

15220-68-R: CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS (APPLICANT) V. DEHAAN CARTAGE COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (16 EMPLOYEES IN THE UNIT).

15225-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. S. S. KRESGE COMPANY LIMITED (K MART DIVISION) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT ITS K MART STORES AT SAULT STE. MARIE, SAVE AND EXCEPT ASSISTANT OFFICE MANAGER, AND PERSONS ABOVE THE RANK OF ASSISTANT OFFICE MANAGER." (16 EMPLOYEES IN THE UNIT).

15229-68-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. NORTH BAY CONCRETE AND SUPPLY COMPANY (RESPONDENT).

UNIT: "ALL READY MIX DRIVERS OF THE RESPONDENT IN THE TOWNSHIP OF BUCKE, IN THE DISTRICT OF TEMISKAMING." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE BATCHER SUPERVISOR PRESENTLY EXERCISES MANAGERIAL FUNCTIONS AND IS NOT INCLUDED IN THE BARGAINING UNIT.

15232-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. SHAFT SINKERS (CANADA) LIMITED AND J.S. REDPATH LIMITED, A JOINT VENTURE (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF CREIGHTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (38 EMPLOYEES IN THE UNIT).

15238-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. STEINBERG'S LIMITED (RESPONDENT).

UNIT: "ALL STORE MAINTENANCE EMPLOYEES OF THE RESPONDENT IN ITS ONTARIO DIVISION, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (30 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15239-68-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. NORANDA COPPER MILLS LTD., FERGUS DIVISION (RESPONDENT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FERGUS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH THE UNIVERSITY." (16 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 828).

15246-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. GRAHAM AUTOMOTIVE (1967) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (22 EMPLOYEES IN THE UNIT).

15247-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. TRENT CO-OPERATIVE DISTRIBUTION CENTRE LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PETERBOROUGH, SAVE AND EXCEPT MANAGER, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (2 EMPLOYEES IN THE UNIT).

15248-68-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CANADA FISHING TACKLE AND SPORTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT COMPANY IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (15 EMPLOYEES IN THE UNIT).

15255-68-R: THE NURSES' ASSOCIATION OF THE CLARKE INSTITUTE OF PSYCHIATRY (APPLICANT) V. CLARKE INSTITUTE OF PSYCHIATRY (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 (INTERVENER).

UNIT: "ALL REGISTERED AND GRADUATE NURSES EMPLOYED BY THE RESPONDENT IN METROPOLITAN TORONTO IN A NURSING OR TEACHING CAPACITY, SAVE AND EXCEPT HEAD NURSES, PERSONS ABOVE THE RANK OF HEAD NURSE AND THOSE NURSES EXERCISING CLERICAL OR LABORATORY FUNCTIONS." (120 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT THE NURSE WHO IS PRESENTLY EMPLOYED IN THE PERSONNEL DEPARTMENT IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS.

15256-68-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. UNION FOOD SERVICE (RESPONDENT).

UNIT: "ALL DRIVERS AND DRIVER SALESMEN OF THE RESPONDENT WORKING AT KINGSTON, SAVE AND EXCEPT SUPERVISORS AND PERSONS ABOVE THE RANK OF SUPERVISORS." (5 EMPLOYEES IN THE UNIT).

15260-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) V. MASTER CRAFT BRIDGE AND ENGINEERING LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15263-68-R: INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS (APPLICANT) V. MCGRAW EDISON OF CANADA LIMITED, LAUNDRY MACHINERY DIVISION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (52 EMPLOYEES IN THE UNIT).

15264-68-R: AMALGAMATED CLOTHING WORKERS OF AMERICA (APPLICANT) V. J. A. BESNER & SONS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT CORNWALL, SAVE AND EXCEPT FOREMEN AND FORELADIES, PERSONS ABOVE THE RANK OF FOREMAN AND FORELADY, TRUCKER, OFFICE AND SALES STAFF." (35 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES)

FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THAT AUTHORIZED INSTRUCTORS AND INSTRUCTRESSES ARE NOT INCLUDED IN THE BARGAINING UNIT.

15266-68-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 478 A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. NIPISSING AREA JOINT HOSPITALS LAUNDRY INCORPORATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT SUPERVISORS, PERSONS ~~ABOVE~~ THE RANK OF SUPERVISOR, OFFICE STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (15 EMPLOYEES IN THE UNIT).

15267-68-R: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. THE FAIRVIEW CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 130 BLOOR STREET WEST, TORONTO, SAVE AND EXCEPT CHIEF ENGINEER, PERSONS ABOVE THE RANK OF CHIEF ENGINEER, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND THOSE PERSONS PRESENTLY COVERED BY A SUBSISTING COLLECTIVE AGREEMENT." (2 EMPLOYEES IN THE UNIT).

15268-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. MARDEN READY MIX CONCRETE (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (3 EMPLOYEES IN THE UNIT).

15274-68-R: INTERNATIONAL BROTHERHOOD OF FIREMEN & OILERS (APPLICANT) V. AMERCOAT OF CANADA LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT FORT ERIE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND CLERICAL STAFF." (5 EMPLOYEES IN THE UNIT).

15275-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION, TEAMSTERS LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CENTENNIAL HOSPITAL LINEN SERVICES (RESPONDENT).

UNIT: "ALL DRIVERS AND HELPERS OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE AND SALES STAFF." (4 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT SERVICE AND TRAINING PERSONNEL ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

15277-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. THE CARTER CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15278-68-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL No. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. CARR'S ELECTRIC LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS, TRUCK DRIVERS AND ALL EMPLOYEES OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (12 EMPLOYEES IN THE UNIT).

15279-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. TOWN OF GRIMSBY (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GRIMSBY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (9 EMPLOYEES IN THE UNIT).

15282-68-R: KINGSTON TYPOGRAPHICAL UNION LOCAL 204 (I.T.U.) (APPLICANT) V. BO-FLAN PHOTO ENGRAVING COMPANY LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT KINGSTON, SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF." (13 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15285-68-R: BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 204 A.F. OF L., C.I.O., C.L.C. (APPLICANT) V. THE CANADIAN NATIONAL INSTITUTE FOR THE BLIND (RESPONDENT) V. THE CANADIAN UNION OF OPERATING ENGINEERS - LOCAL 101 (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 1929 BAYVIEW AVENUE, TORONTO, SAVE AND EXCEPT FOREMEN AND SUPERVISORS, PERSONS ABOVE THE RANKS OF FOREMAN AND SUPERVISOR, OFFICE AND CLERICAL STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND EMPLOYEES COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 101." (195 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PROFESSIONAL STAFF, TEACHING STAFF, CASE WORKERS, PROFESSIONAL LIBRARY STAFF, PERSONS EMPLOYED IN THE EMPLOYMENT SERVICES DEPARTMENT AND PERSONS EMPLOYED IN THE PERSONNEL DEPARTMENT ARE NOT INCLUDED IN THE BARGAINING UNIT.

15291-68-R: MILK AND BREAD DRIVERS, DAIRY EMPLOYEES, CATERERS AND ALLIED EMPLOYEES, LOCAL UNION No. 647, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. VERSAFOOD SERVICES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS VENDING DIVISION AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND OFFICE STAFF." (6 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15293-68-R: AMALGAMATED CLOTHING WORKERS OF AMERICA CLC AFL-CIO (APPLICANT) V. DEACON BROTHERS SPORTWEAR LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BELLEVILLE, SAVE AND EXCEPT SUPERVISORS, FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF SUPERVISOR, FOREMAN, AND FORELADY, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STUDENTS EMPLOYED ON A CO-OPERATIVE TRAINING PROGRAM." (52 EMPLOYEES IN THE UNIT).

15295-68-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 183 AFFILIATED WITH S.E.I.U. A.F.L., C.I.O., C.L.C. (APPLICANT) V. CENTRAL PARK LODGES OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT PROFESSIONAL NURSING STAFF, PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANK OF SUPERVISOR OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE VACATION PERIOD." (37 EMPLOYEES IN THE UNIT).

15305-68-R: BROTHERHOOD OF PAINTERS, DECORATORS AND PAPERHANGERS OF AMERICA, GLAZIERS LOCAL 1819 (APPLICANT) V. TRENT GLASS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN PETERBOROUGH, SAVE AND EXCEPT SUPERINTENDENTS, PERSONS ABOVE THE RANK OF SUPERINTENDENT, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY A CERTIFICATE GRANTED BY THE ONTARIO LABOUR RELATIONS BOARD ON SEPTEMBER 15TH, 1966." (8 EMPLOYEES IN THE UNIT).

15306-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. POLARIS STEEL GENERAL CONTRACTOR (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15310-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. PHI CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15312-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PRODUCERS CONTAINER (CANADA) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT TECUMSEH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (45 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 829).

15314-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. BORDER CITY EXCAVATORS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15315-68-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L. - C.I.O. - C.L.C. LOCAL 197 (APPLICANT) V. NICK MASNEY HOTELS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS COLLINS HOTEL IN DUNDAS, SAVE AND EXCEPT OWNERS, MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (23 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 833).

15316-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. R. E. FERGUSON LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15319-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SUDBURY AND ALGOMA SANATORIUM ASSOCIATION (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SUDBURY, REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMICISTS, GRADUATE DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS AND HEADS OF DEPARTMENTS, PERSONS ABOVE THE RANK OF SUPERVISOR AND HEAD OF DEPARTMENT, OFFICE STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED BY AN EXISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 258." (20 EMPLOYEES IN THE UNIT).

15322-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 772 (APPLICANT) V. THE WATSON MANUFACTURING COMPANY OF PARIS LIMITED (RESPONDENT).

UNIT: "ALL STATIONARY ENGINEERS EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT BRANTFORD, SAVE AND EXCEPT CHIEF ENGINEER AND PERSONS ABOVE THE RANK OF CHIEF ENGINEER." (4 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15328-68-R: TEXTILE WORKERS UNION OF AMERICA, CLC, AFL-CIO (APPLICANT) V. SURE-FIT FURNITURE SLIPCOVERS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT AJAX, SAVE AND EXCEPT FOREMEN, FORELADIES, THOSE ABOVE THE RANK OF FOREMEN AND FORELADY, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (44 EMPLOYEES IN THE UNIT).

15346-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #2307 (APPLICANT) V. MARCEL OUELLET (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15350-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION #2307 (APPLICANT) V. J. G. FITZPATRICK CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15356-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. S. McNALLY & SONS LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15357-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793
(APPLICANT) V. GEORGE WIMPEY CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF ESSEX AND KENT ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

15360-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. QUALITY STUCCO (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15363-68-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. LUNDY CONSTRUCTION LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO PRE-HEARING VOTE

15133-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. ALLANSON MANUFACTURING CORPORATION LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (217 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		201
NUMBER OF PERSONS WHO CAST BALLOTS		201
NUMBER OF SPOILED BALLOTS	1	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	120	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	80	

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

14861-68-R: BAKERY AND CONFECTIONERY WORKERS' INTERNATIONAL UNION OF AMERICA, LOCAL 264 (APPLICANT) V. THE GREAT ATLANTIC & PACIFIC TEA COMPANY LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN ITS BAKERY DIVISION ON LAUGHTON AVENUE IN METROPOLITAN TORONTO, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (319 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		309
NUMBER OF PERSONS WHO CAST BALLOTS		302
NUMBER OF SPOILED BALLOTS	4	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	165	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	133	

14898-68-R: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE UNITED STATES & CANADA (APPLICANT) V. AMERICAN OPTICAL COMPANY CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		25
NUMBER OF PERSONS WHO CAST BALLOTS		25
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	17	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8	

14934-68-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) V.
MARTINI SAND & GRAVEL LTD. (RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESTON, SAVE AND EXCEPT
FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF."
(18 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	16
NUMBER OF PERSONS WHO CAST BALLOTS	16
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	10
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	6

14941-68-R: UNITED RUBBER, CORK, LINOLEUM, PLASTIC WORKERS OF AMERICA
(APPLICANT) V. CANADIAN GENERAL-TOWER LIMITED (RESPONDENT) V. THE
CANADIAN RESIN WORKERS' UNION DIVISION 1 (NCCL) (INTERVENER).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT GALT, SAVE AND EXCEPT
FOREMEN, FORELADIES, PERSONS ABOVE THE RANKS OF FOREMAN AND FORELADY,
OFFICE AND CLERICAL STAFF, SALES STAFF, STUDENTS EMPLOYED DURING THE
SCHOOL VACATION PERIOD, AND PERSONS COVERED BY THE SUBSISTING COLLEC-
TIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF OPER-
ATING ENGINEERS, LOCAL 104." (321 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	295
NUMBER OF PERSONS WHO CAST BALLOTS	291
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	177
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	113

15005-68-R: OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION
(APPLICANT) V. DOMTAR CHEMICALS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT BEACHVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, AND PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT." (4 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	4
NUMBER OF PERSONS WHO CAST BALLOTS	4
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	3
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	1

15093-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. ARNOLD STEELE & ASSOCIATES LTD. (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION #1450 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS AND CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF PETERBOROUGH AND VICTORIA, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (11 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	5
NUMBER OF PERSONS WHO CAST BALLOTS	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	5
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF INTERVENER	0

APPLICATIONS FOR CERTIFICATION DISMISSED DURING NOVEMBER

NO VOTE CONDUCTED

15001-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18 (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - CLC, ONTARIO HYDRO EMPLOYEES UNION, LOCAL 100 (INTERVENER #1) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER #2). (56 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 802).

15121-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. CONSTRUCTION PRODUCTS DIVISION DOMINION BRIDGE COMPANY LIMITED (RESPONDENT) V. CARPENTERS' DISTRICT COUNCIL OF TORONTO & VICINITY, U.B. OF C. & J. OF A. (INTERVENER). (9 EMPLOYEES).

15128-68-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT)
V. VR/WESSON LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).
(40 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 811).

15141-68-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) V.
MOBILE CARTAGE AND DISTRIBUTORS LIMITED (RESPONDENT). (1 EMPLOYEE).

(SEE INDEXED ENDORSEMENT PAGE 814).

15164-68-R: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL
UNION, LOCAL 756, AFL, CIO, CLC, ST CATHARINES, ONTARIO (APPLICANT)
DEZI BUCOVICKS, 259 ST PAUL ST. ST CATHARINES ONT. (RESPONDENT)
V. GROUP OF EMPLOYEES (OBJECTORS). (7 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 817).

15216-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA
(UE) (APPLICANT) V. MARSLAND ENGINEERING LIMITED (RESPONDENT).
(595 EMPLOYEES).

15244-68-R: OTTAWA PUBLIC SCHOOL BOARD MAINTENANCE STAFF ASSOCIATION
(APPLICANT) V. THE CITY OF OTTAWA PUBLIC SCHOOL BOARD (RESPONDENT).
(104 EMPLOYEES).

15261-68-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH
AMERICA (AFL-CIO-CLC) LOCAL 1264A (APPLICANT) V. CRABTREE MEAT
PACKERS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).
(12 EMPLOYEES).

15265-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL UNION 93 (APPLICANT) V. ROLAND SPINO LIMITED (RESPONDENT) V.
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527
(INTERVENER). (2 EMPLOYEES).

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

13757-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V.
SENTRY DEPARTMENT STORES LIMITED (OPERATING UNDER THE NAME G.E.M.
STORES (1965) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT #1: "ALL EMPLOYEES EMPLOYED BY THE RESPONDENT AT ITS STORE AT
OTTAWA, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER,
MERCHANDISING DEPARTMENT MANAGERS, DEPARTMENT MANAGERS, FRONT OFFICE
SUPERVISOR AND PERSONS ABOVE THOSE RANKS, OFFICE STAFF, SECURITY
GUARDS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER
WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD."
(35 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		32
NUMBER OF PERSONS WHO CAST BALLOTS		35
BALLOTS SEGREGATED AND NOT COUNTED	5	
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	10	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	20	

(APPLICANT DISMISSED).

UNIT #2: "ALL EMPLOYEES OF THE RESPONDENT REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AT ITS STORE AT OTTAWA, SAVE AND EXCEPT STORE MANAGER, ASSISTANT STORE MANAGER, MERCHANDISING DEPARTMENT MANAGERS, DEPARTMENT MANAGERS, FRONT OFFICE SUPERVISOR, AND PERSONS ABOVE THOSE RANKS, OFFICE STAFF, SECURITY GUARDS AND PERSONS COVERED BY BARGAINING UNIT "B" (72 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO ALL THE EVIDENCE AND REPRESENTATIONS OF THE PARTIES)

FOR THE PURPOSE OF CLARITY, SINCE THE EMPLOYEES EMPLOYED IN THE FURNITURE, APPLIANCES, CANADIAN TIRE, BEAUTY SALON, CLEANERS AND BARBER SHOP CONCESSIONS ARE PAID DIRECTLY BY THEIR CONCESSIONAIRE, AND SINCE THERE IS NO DISPUTE BETWEEN THE PARTIES CONCERNING THE IDENTITY OF THE EMPLOYER OF SUCH EMPLOYEES, THE BOARD DECLARED THAT THEY ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN BARGAINING UNIT #2.

(APPLICANT CERTIFIED).

14847-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. KINGSWAY PLASTERING CO. LTD. (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN BUILDING PROJECTS IN METROPOLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN."
(13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST		16
NUMBER OF PERSONS WHO CAST BALLOTS		10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2	
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	8	

(SEE INDEXED ENDORSEMENT PAGE 797).

14943-68-R: INTERNATIONAL WOODWORKERS OF AMERICA (APPLICANT) V.
WORKWELL WOODWORKING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO,
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE
AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION
PERIOD." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	14
NUMBER OF PERSONS WHO CAST BALLOTS	14
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	12

15124-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. TUBCO
LAMP PARTS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN METROPOLITAN TORONTO,
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE
AND SALES STAFF, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION
PERIOD." (26 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	26
NUMBER OF PERSONS WHO CAST BALLOTS	26
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	8
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	18

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING NOVEMBER

15230-68-R: INTERNATIONAL BROTHERHOOD OF TEAMSTERS, INTERNATIONAL
UNION OF OPERATING ENGINEERS, AND THE LABOURERS INTERNATIONAL UNION
OF NORTH AMERICA (FORMING A COUNCIL OF UNIONS KNOWN AS T. E. L.
COUNCIL) (APPLICANT) V. ARDOT CONTRACTING LIMITED (RESPONDENT).
(13 EMPLOYEES).

15287-68-R: GENERAL TRUCK DRIVERS UNION, LOCAL 938, AFFILIATED WITH
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA (APPLICANT) V. CRYSTALL GLASS AND PLASTICS
LIMITED (RESPONDENT). (8 EMPLOYEES).

15311-68-R: TEAMSTER'S UNION LOCAL 879 (APPLICANT) V. FINE PAPERS
LONDON LIMITED (RESPONDENT). (5 EMPLOYEES).

15313-68-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. FERRON IRON LIMITED (RESPONDENT). (29 EMPLOYEES).

15317-68-R: CARPENTERS' DISTRICT COUNCIL OF TORONTO AND VICINITY (APPLICANT) V. PANEX INCORPORATED (RESPONDENT). (33 EMPLOYEES).

15323-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ESSEX NORTH DISTRICT HIGH SCHOOL BOARD (RESPONDENT). (12 EMPLOYEES).

15333-68-R: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204, AFL-CIO-CLC (APPLICANT) V. DOMINION WINDOW & FLOOR SERVICE LIMITED (RESPONDENT). (19 EMPLOYEES).

15336-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. SOTRAMONT INC. (RESPONDENT). (3 EMPLOYEES).

15347-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL-CIO-CLC. (APPLICANT) V. FRIEDMAN'S DEPARTMENT STORES LIMITED (RESPONDENT). (16 EMPLOYEES).

15355-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. JOHN KERR CONSTRUCTION LIMITED (RESPONDENT). (3 EMPLOYEES).

15364-68-R: THE SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL 562 (APPLICANT) V. LOSEREIT SALES & SERVICES LTD. (RESPONDENT). (3 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED
OF DURING NOVEMBER

15184-68-R: MURRAY FINOCHIO 271 YORK ST. HAM. ONT. ROGER LAMBERT 106 MELBOURNE ST. HAM. ONT. (APPLICANT) V. LOCAL 197 OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L. C.I.O. C.L.C. (RESPONDENT). (GRANTED).

(RE: J. V. MORRISON CARRYING ON BUSINESS UNDER THE NAME AND STYLE OF THE WILSON HOUSE, HAMILTON, ONTARIO).

UNIT: "ALL EMPLOYEES EMPLOYED AS TAPMEN AND WAITERS BY J. V. MORRISON AT THE WILSON HOUSE AT HAMILTON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, AND PART-TIME EMPLOYEES."
(3 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON		
VOTERS' LIST		3
NUMBER OF PERSONS WHO CAST BALLOTS	3	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	3	

15195-68-R: WILLIAM WALTER MERCER, ON BEHALF OF MYSELF AND OTHER EMPLOYEES OF THE EASTWOOD PARK HOTEL LIMITED (APPLICANT) V. INTERNATIONAL BEVERAGE DISPENSERS AND BARTENDERS UNION OF THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION, LOCAL 280 (RESPONDENT). (GRANTED).

(RE: EASTWOOD PARK HOTEL LIMITED,
METROPOLITAN TORONTO, ONTARIO).

UNIT: "ALL FULL-TIME AND PART-TIME MALE AND FEMALE EMPLOYEES EMPLOYED IN THE BEVERAGE DEPARTMENTS OF EASTWOOD PARK HOTEL LIMITED IN METROPOLITAN TORONTO AS TAPMEN, BARTENDERS, BEVERAGE WAITERS, BAR BOYS AND IMPROVERS." (16 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON		
VOTERS' LIST		15
NUMBER OF PERSONS WHO CAST BALLOTS	15	
NUMBER OF BALLOTS MARKED IN FAVOUR		
OF RESPONDENT	0	
NUMBER OF BALLOTS MARKED AGAINST		
RESPONDENT	15	

15240-68-R: WEST END CHRYSLER DODGE LTD. (APPLICANT) V. LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT). (GRANTED). (85 EMPLOYEES).

(RE: WEST END CHRYSLER DODGE LTD.,
METROPOLITAN TORONTO, ONTARIO).

(SEE INDEXED ENDORSEMENT PAGE 839).

15286-68-R: EMPLOYEES OF THE BRANTFORD GENERAL HOSPITAL WHO ARE MEMBERS OF THE B.S.E.I.U. LOCAL 204 (APPLICANT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION (RESPONDENT). (365 EMPLOYEES). (DISMISSED).

(RE: BRANTFORD GENERAL HOSPITAL,
BRANTFORD, ONTARIO).

(SEE INDEXED ENDORSEMENT PAGE 840).

15294-68-R: JOAN MCILWAIN (APPLICANT) V. UNITED ELECTRICAL RADIO & MACHINE WORKERS OF AMERICA (RESPONDENT). (50 EMPLOYEES). (WITHDRAWN).

(RE: DELTA ELECTRONICS LIMITED,
REXDALE, ONTARIO).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

NOVEMBER

15298-68-U: DOLPHIN FORMING LIMITED (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENT). (WITHDRAWN).

15299-68-U: DOLPHIN FORMING LIMITED (APPLICANT) V. THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCAL #27, #3233, #681, #3227, #666 #1963 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (WITHDRAWN).

15331-68-U: DOMUS ELECTRIC LTD. (APPLICANT) V. S. GATONO, A. STUCK, D. BATRA AND E. ROCCO (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL DISPOSED OF DURING

NOVEMBER

15187-68-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA (APPLICANT) V. CLAUDE ABRAMS COMPANY LIMITED OPERATING AS PUBLIC OPTICAL (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 842).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING NOVEMBER

14992-68-U: CANADIAN UNION OF OPERATING ENGINEERS (APPLICANT) V. BARTON DISTILLING (CANADA) LIMITED (RESPONDENT). (DISMISSED).

15098-68-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. D. NOBLE (RESPONDENT). (WITHDRAWN).

15099-68-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. JOHN E. CAMERON, ET AL. (RESPONDENTS). (WITHDRAWN).

15120-68-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (APPLICANT) V. ST. RAPHAEL'S NURSING HOMES LIMITED (RESPONDENT). (DISMISSED).

15135-68-U: POOLE CONSTRUCTION LIMITED (APPLICANT) V. JAMES B. ATTRILL AND RAYMOND TUNKS (RESPONDENTS). (WITHDRAWN).

15149-68-U: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 (APPLICANT) V. DRAGO OF CANADA LIMITED, ALEX MACNEIL, HUGH J. MACISAAC AND LAWRENCE GUINDON (RESPONDENTS). (GRANTED).

15206-68-U: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. CLAUDE ABRAMS INDUSTRIES LTD. AND LOUIS WILLIAM ABRAMS (RESPONDENTS). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 845).

15297-68-U: DOLPHIN FORMING LIMITED (APPLICANT) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (RESPONDENT). (WITHDRAWN).

15300-68-U: DOLPHIN FORMING LIMITED (APPLICANT) V. THE CARPENTERS DISTRICT COUNCIL OF TORONTO AND VICINITY ON BEHALF OF LOCALS #27, #3233, #681, #3227, #666, #1963 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (RESPONDENT). (WITHDRAWN).

15320-68-U: THE LAMBTON MOTORS LIMITED (APPLICANT) V. DAVID JOHN TURNER (RESPONDENT). (DISMISSED).

15367-68-U: TEXTILE WORKERS' UNION OF AMERICA, SOUTH-WESTERN ONTARIO TEXTILE JOINT BOARD AND ITS LOCAL 741 (APPLICANT) V. HARDING CARPETS LIMITED (RESPONDENT). (WITHDRAWN).

15373-68-U: TEXTILE WORKERS' UNION OF AMERICA, SOUTH-WESTERN ONTARIO TEXTILE JOINT BOARD AND ITS LOCAL 741 (APPLICANT) V. HARDING CARPETS LIMITED (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING

NOVEMBER

14708-68-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SCEPTER MANUFACTURING COMPANY LIMITED (RESPONDENT). (DISMISSED).

- AND -

14753-68-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SCEPTER MANUFACTURING COMPANY LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 847).

15117-68-U: BUILDING SERVICE EMPLOYEES' INTERNATIONAL UNION, LOCAL 204 (COMPLAINANT) V. ST. RAPHAEL'S NURSING HOMES LIMITED (RESPONDENT). (WITHDRAWN).

15144-68-U: UNITED GLASS AND CERAMIC WORKERS OF NORTH AMERICA (COMPLAINANT) V. LIBBY-OWENS-FORD GLASS OF CANADA LIMITED (RESPONDENT). (WITHDRAWN).

15167-68-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL: CIO: CLC (COMPLAINANT) V. SIEGEL FRUIT COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

15168-68-U: HOTEL, MOTEL & RESTAURANT EMPLOYEES UNION LOCAL 899 (COMPLAINANT) V. CORNWALLIS HOTEL, 22 SECOND ST. WEST (RESPONDENT). (WITHDRAWN).

15186-68-U: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (COMPLAINANT) V. VR/WESSON LIMITED (RESPONDENT). (WITHDRAWN).

15204-68-U: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (COMPLAINANT) V. CLAUDE ABRAMS INDUSTRIES LTD. AND LOUIS WILLIAM ABRAMS (RESPONDENTS). (DISMISSED).

15205-68-U: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (COMPLAINANT) V. CLAUDE ABRAMS INDUSTRIES LTD. AND LOUIS WILLIAM ABRAMS (RESPONDENTS). (DISMISSED).

15207-68-U: MANSFIELD MATHIAS (COMPLAINANT) V. FORD MOTOR CO., AND BOB DARAGON (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 849).

15217-68-U: HOTEL, MOTEL, AND RESTAURANT EMPLOYEE'S UNION LOCAL 899, A.F. OF L-C.I.O.-C.L.C. (COMPLAINANT) V. CORNWALLIS HOTEL COMPANY LIMITED (MR. J. SPRACKMAN TRUSTEE) 22 SECOND STREET WEST, CORNWALL, ONTARIO (RESPONDENT). (WITHDRAWN).

15259-68-U: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, LOCAL 756, ST. CATHARINES ONTARIO (COMPLAINANT) V. DEZO BUKOVICS (RESPONDENT). (WITHDRAWN).

15272-68-U: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. CANADA FISHING TACKLE AND SPORTS LTD. (RESPONDENT). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13756-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT) V. SENTRY DEPARTMENT STORES LIMITED (OPERATING UNDER THE NAME G.E.M. STORES (1965) (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 851).

14345-67-R: THE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) V. THE GENERAL HOSPITAL OF PORT ARTHUR (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER). (REQUEST DENIED).

14346-67-R: THE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) V. MCKELLAR GENERAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER #1) V. OFFICE AND PROFESSIONAL EMPLOYEES UNION, LOCAL 81 (INTERVENER #2). (REQUEST DENIED).

14347-67-R: THE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) V. ST. JOSEPH'S GENERAL HOSPITAL (RESPONDENT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 853).

15045-68-R: BUILDING SERVICE EMPLOYEES' UNION, LOCAL 204 AFFILIATED WITH S.E.I.U. A.F.L., C.I.O., C.L.C. (APPLICANT) V. CENTRAL PARK LODGES OF CANADA LTD. (RESPONDENT). (REQUEST DENIED).

INDEXED ENDORSEMENTS - CERTIFICATION

14428-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 765 (APPLICANT) V. PRE-CON MURRAY LIMITED (RESPONDENT) V. LOCAL NO. 7, OTTAWA, ONTARIO, BRICKLAYERS, MASONS AND PLASTERERS I.U. OF A. (INTERVENER #1) V. LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (INTERVENER #2)

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: A. E. GOLDEN AND P. A. THOMSON FOR THE APPLICANT; B. W. BINNING AND R. BRADLEY FOR THE RESPONDENT; D. WILLIAMS FOR INTERVENER #1; AND R. KOSKIE AND R. FORD FOR INTERVENER #2.

DECISION OF THE BOARD:

NOVEMBER 6, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION WHICH WAS FILED IN APRIL OF 1968.
2. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.
3. THE BOARD FURTHER FINDS THAT THIS IS AN APPLICATION FOR CERTIFICATION WITHIN THE MEANING OF SECTION 92 OF THE LABOUR RELATIONS ACT.
4. FOLLOWING THE TERMINAL DATE IT WAS APPARENT THAT THERE WERE PROBLEMS IN CONNECTION WITH THE BARGAINING UNIT AND, ACCORDINGLY, AN EXAMINER WAS APPOINTED TO INQUIRE INTO THESE MATTERS. THE EXAMINER ISSUED HIS REPORT, A VERY LENGTHLY ONE, ON AUGUST 9, 1968, FOLLOWING WHICH INTERVENER No. 2 AND THE RESPONDENT REQUESTED A HEARING IN ORDER TO MAKE REPRESENTATIONS WITH RESPECT TO THE REPORT AND THE APPROPRIATENESS OF THE BARGAINING UNIT. IT IS TO BE NOTED THAT THE SCHEDULED HEARING WAS THE FIRST BEFORE THE BOARD BECAUSE, FOLLOWING ITS USUAL PRACTICE IN CONSTRUCTION INDUSTRY CASES, THE EXAMINER WAS APPOINTED PRIOR TO ANY HEARING.
5. ON CONSENT OF THE PARTIES THE HEARING ORIGINALLY SET FOR SEPTEMBER 20TH WAS ADJOURNED UNTIL OCTOBER 25TH. BY A LETTER DATED OCTOBER 23RD THE APPLICANT NOTIFIED THE BOARD THAT IT WOULD BE SEEKING AN ORDER UNDER SECTION 7(5) OF THE LABOUR RELATIONS ACT DIRECTING THAT THE APPLICANT BE CERTIFIED WITHOUT THE NECESSITY OF TAKING A REPRESENTATION VOTE. THE BOARD FORWARDED COPIES OF THIS LETTER TO THE OTHER PARTIES CONCERNED.
6. WHEN THIS MATTER CAME ON FOR HEARING THE PARTIES AGREED ON A STATEMENT OF FACTS RESPECTING A QUESTION ARISING ON THE APPROPRIATENESS OF THE BARGAINING UNIT. FOLLOWING THE PRESENTATION OF THIS AGREED STATEMENT, THE SOLICITOR FOR THE RESPONDENT REQUESTED AN ADJOURNMENT IN ORDER TO CALL EVIDENCE IN REPLY TO THE AGREED STATEMENT OF FACTS. IT WAS READILY APPARENT, FROM THE AGREED STATEMENT AND ALL THE OTHER CIRCUMSTANCES OF THE CASE, THAT THE RESPONDENT COULD NOT HAVE BEEN EXPECTED TO BE IN A POSITION TO PROCEED WITHOUT THE ADJOURNMENT AND THERE WERE IN FACT NO OBJECTIONS FROM OTHER PARTIES TO THIS REQUEST.
7. WITH RESPECT TO THE REQUEST FOR AN ORDER UNDER SECTION 7(5) THERE WAS STRENUOUS OBJECTION, PARTICULARLY ON THE PART OF INTERVENER No. 2, TO THE APPLICANT BEING PERMITTED TO ADDUCE EVIDENCE IN SUPPORT OF ITS REQUEST. IT APPEARS THAT THE FACTS ON WHICH THE APPLICANT INTENDS TO RELY WERE KNOWN TO THE APPLICANT'S REPRESENTATIVE IN OTTAWA PROBABLY SOME TWO MONTHS PRIOR TO THIS HEARING, ALTHOUGH NOT BEFORE THE COMPLETION OF THE EXAMINER'S INQUIRIES. THESE FACTS, HOWEVER, DID NOT COME TO THE ATTENTION OF THE APPLICANT'S SOLICITOR UNTIL A FEW DAYS PRIOR TO THE HEARING. THE ALLEGATIONS RELATED TO THE LAY-

OFF OF ALL OF THE PERSONS IN THE PROPOSED BARGAINING UNIT SAVE ONE AND THE SUBSEQUENT RE-EMPLOYMENT OF TWO BY A SUBCONTRACTOR ON THE JOB. IT APPEARS THAT THE LAY-OFFS OCCURRED OVER A PERIOD OF TIME.

8. THERE ARE TWO POINTS TO BE NOTED IN CONNECTION WITH THE APPLICANT'S REQUEST. IN THE FIRST PLACE, THE HEARING ON OCTOBER 25TH WAS THE FIRST HEARING BEFORE THE BOARD. SECONDLY, THAT HEARING WAS ADJOURNED ON ANOTHER MATTER. COUNSEL FOR INTERVENER No. 2 REFERRED TO AN EARLIER BOARD DECISION IN VILLAGE CONTRACTORS, O.L.R.B. MONTHLY REPORT, APRIL 1966, PAGE 60. IN THAT CASE THE APPLICANT SOUGHT LEAVE TO FILE PARTICULARS IN SUPPORT OF A MOTION MADE UNDER SECTION 7(5). THE FIRST HEARING IN THE CASE OCCURRED ON MARCH 10 AT WHICH TIME AN ADJOURNMENT WAS GRANTED. AT THAT TIME THE APPLICANT HAD ALREADY HAD NOTICE THAT EMPLOYEES WERE OBJECTING TO THE APPLICATION AND IT WAS IN CONNECTION WITH THESE OBJECTIONS THAT THE APPLICANT WAS SEEKING TO FILE CHARGES. THE HEARING RESUMED AGAIN ON MARCH 15 AND IT WAS NOT UNTIL THE AFTERNOON OF THE 15TH THAT THE MOTION WAS MADE. THE BOARD REFUSED TO GRANT LEAVE TO FILE THE CHARGES BECAUSE, IN ITS VIEW, THE APPLICANT HAD HAD AMPLE TIME TO INVESTIGATE THE CIRCUMSTANCES SURROUNDING THE STATEMENT OF OBJECTION.

9. IN OUR VIEW THAT CASE IS DISTINGUISHABLE FROM THE PRESENT ONE IN THAT IN THE INSTANT CASE WE ARE DEALING WITH A FIRST HEARING AND THE MATTERS IN THE VILLAGE CONTRACTORS CASE WERE ONES WHICH CERTAINLY SHOULD HAVE BEEN RAISED PRIOR TO THE FIRST HEARING AND WERE NOT. THE BOARD'S PRACTICE WITH RESPECT TO PETITIONS IS UNDERSTOOD BY TRADE UNIONS AND THEY KNOW FULL WELL THEY HAVE A DUTY TO INVESTIGATE THE CIRCUMSTANCES SURROUNDING THE ORIGIN AND PREPARATION OF STATEMENTS OF OBJECTION AS SOON AS THEY RECEIVE NOTICE OF THEIR FILING. IN THE INSTANT CASE WE ARE DEALING WITH ALLEGED CONDUCT THE SIGNIFICANCE OF WHICH WOULD NOT, IN OUR VIEW, NECESSARILY BE READILY APPARENT TO THE APPLICANT'S REPRESENTATIVE IN OTTAWA. THIS IS MORE PARTICULARLY SO WHEN REGARD IS HAD TO THE FURTHER ALLEGATION THAT THE CONDUCT IN QUESTION IS PART OF A PATTERN IN THAT THE RESPONDENT IS ALLEGED TO HAVE FOLLOWED THE SAME COURSE OF CONDUCT IN ANOTHER CASE INVOLVING EMPLOYEES NOT IN OTTAWA BUT IN TORONTO.

10. IN OUR VIEW, THE DECISIVE FACTOR IN THIS CASE IS THAT AN ADJOURNMENT WAS INEVITABLE ON ANOTHER MATTER. THE CASE SEEMS TO BE ON ALL FOURS WITH THE MUIRHEAD INSTRUMENTS LIMITED CASE, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, PAGE 499. SEE ALSO VR/WESSON LIMITED, BOARD FILE No. 15128-68-R, DECISION DATED OCTOBER 10, 1968. WE WISH TO EMPHASIZE, HOWEVER, THAT WE ARE IN NO WAY PASSING ON THE SITUATION THAT MIGHT HAVE ARISEN HAD THERE BEEN NO ADJOURNMENT.

11. ACCORDINGLY, THE APPLICANT WILL BE ENTITLED TO ADDUCE EVIDENCE IN SUPPORT OF ITS ALLEGATIONS AT THE RESUMPTION OF THE HEARING IN THIS MATTER.

12. THE REGISTRAR IS DIRECTED TO LIST THIS MATTER FOR CONTINUATION OF HEARING.

14454-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE CORPORATION OF THE CITY OF WOODSTOCK (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS D. B. ARCHER AND H. F. IRWIN.

DECISION OF H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER H. F. IRWIN:

NOVEMBER 13, 1968.

1. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER, DATED SEPTEMBER 19TH, 1968, IN THIS MATTER.

. . .

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT CITY CLERK, DEPUTY CITY CLERK, CITY TREASURER, DEPUTY CITY TREASURER, CITY ENGINEER, INDUSTRIAL COMMISSIONER, ASSESSMENT COMMISSIONER, DEPUTY ASSESSMENT COMMISSIONER, PARKING METER SUPERVISOR, CONFIDENTIAL SECRETARIES TO THE CITY MANAGER, CITY TREASURER, DEPUTY CITY CLERK, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND ALL PERSONS COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 240, CONSTITUTES A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE CONFIDENTIAL SECRETARIES TO THE ASSESSMENT COMMISSIONER, THE DIRECTOR OF RECREATION, PARKS AND COMMUNITY CENTRE, THE DIRECTOR OF SOCIAL SERVICES, THE POTENTIAL TAX COLLECTOR AND ENGINEERING TECHNICIAN ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

5. THE BOARD DECLARES THAT GORDON W. ANGELL, CHARLES E. COLLINS, JOHN DOUGLAS HARDY, ARTHUR WATSON, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. HAVING CONSIDERED ALL OF THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT KENNETH DOLSON, CLASSIFIED BY THE RESPONDENT AS ARENA MANAGER AND ROBERT E. PARKER, CLASSIFIED BY THE RESPONDENT AS SUPERVISOR OF TRANSPORT SYSTEM, EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. THE BOARD FURTHER FINDS THAT JOHN MCGINNIS, CLASSIFIED BY THE RESPONDENT AS PURCHASING AGENT, DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. IN MAKING SUCH DETERMINATIONS, THE BOARD HAS APPLIED THE CRITERIA SET OUT IN THE FALCONBRIDGE NICKEL MINE CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, P. 379.

7. THE BOARD FURTHER FINDS THAT NORMA JEAN THOMAS, CONFIDENTIAL SECRETARY TO THE CITY ENGINEER, IS EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON APRIL 24TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER D. B. ARCHER: NOVEMBER 13, 1968.

I DISSENT. I WOULD FIND THAT ROBERT E. PARKER DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE ACT AND SHOULD BE INCLUDED IN THE BARGAINING UNIT. I WOULD FURTHER FIND THAT NORMA JEAN THOMAS IS NOT EMPLOYED IN A CAPACITY RELATING TO LABOUR RELATIONS AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

14847-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 506 (APPLICANT) V. KINGSWAY PLASTERING CO. LTD. (RESPONDENT) V. OPERATIVE PLASTERERS' AND CEMENT MASONS' INTERNATIONAL ASSOCIATION OF THE UNITED STATES AND CANADA, LOCAL 117 (INTERVENER).

BEFORE: J. H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: M. LEVINSON AND T. NEIL FOR THE APPLICANT, R. D. PERKINS AND A. TESOLIN FOR THE RESPONDENT, NO ONE FOR THE INTERVENER.

DECISION OF THE BOARD: NOVEMBER 6, 1968.

1. BY A DECISION DATED SEPTEMBER 9TH, 1968, THE BOARD DIRECTED THE TAKING OF A REPRESENTATION VOTE. ON THE TAKING OF THE VOTE ON SEPTEMBER 24TH, 1968, THE ELIGIBLE VOTERS WERE ASKED TO INDICATE ON BALLOTS WHETHER OR NOT THEY WISHED TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.
2. THE APPLICANT FILED OBJECTIONS TO THE CONDUCT OF THE VOTE. MORE PARTICULARLY, THE APPLICANT ALLEGED THAT ANGELO BURIGANA, A BUSINESS REPRESENTATIVE OF THE INTERVENER, WAS IN AND ABOUT THE POLLING AREA PRIOR TO THE TAKING OF THE VOTE AND ON THE JOB SITE DURING THE TAKING OF THE VOTE. THE APPLICANT ALLEGED THAT THE PURPOSE OF HIS PRESENCE WAS TO ATTEMPT TO PERSUADE EMPLOYEES NOT TO VOTE FOR THE APPLICANT. THE APPLICANT FURTHER ALLEGES THAT BURIGANA'S PRESENCE COULD ONLY BE INTERPRETED BY THE EMPLOYEES AS AN INDICATION OF THE RESPONDENT'S DESIRE NOT TO HAVE THE APPLICANT BARGAIN ON BEHALF OF THE EMPLOYEES CONCERNED. IN THESE CIRCUMSTANCES, THE APPLICANT SUBMITS THAT THE VOTE DOES NOT REFLECT THE TRUE WISHES OF THE EMPLOYEES. THE APPLICANT ACCORDINGLY REQUESTS THAT THE BOARD EITHER DIRECT A NEW REPRESENTATION VOTE OR GRANT OUTRIGHT CERTIFICATION TO THE APPLICANT.
3. THE ONLY WITNESS CALLED TO GIVE EVIDENCE IN SUPPORT OF THE APPLICANT'S CHARGES WAS ANTHONY NEIL, A BUSINESS AGENT FOR THE APPLICANT, WHO GAVE THE FOLLOWING TESTIMONY. THE POLLING STATION WAS IN THE OFFICE OF THE SUPERINTENDENT OF THE APARTMENT BUILDING WHICH IS UNDER CONSTRUCTION ON THE SITE WHEN THE EMPLOYEES IN QUESTION WERE WORKING. THE POLLING STATION WAS OPEN FROM 11:30 A.M. TO 12:30 P.M. ON SEPTEMBER 24TH. AT ABOUT 11:15 A.M. ON THAT DAY BOTH NEIL AND BURIGANA, TOGETHER WITH ALDO TESOLIN, THE PRESIDENT OF THE RESPONDENT, AND THE TWO SCRUTINEERS WERE IN THE SUPERINTENDENT'S APARTMENT. A FEW OF THE EMPLOYEES ELIGIBLE TO VOTE WERE AT THAT TIME OUTSIDE THE APARTMENT IN THE HALLWAY. AT THE REQUEST OF THE BOARD'S RETURNING OFFICER, NEIL, BURIGANA AND TESOLIN LEFT THE AREA OF THE POLLING STATION PRIOR TO THE COMMENCEMENT OF THE VOTE. BOTH NEIL AND BURIGANA REMAINED ON THE CONSTRUCTION SITE OUTSIDE THE APARTMENT BUILDING DURING THE TAKING OF THE VOTE. BURIGANA POSTED HIMSELF AT THE ENTRANCE TO THE SITE, SOME 150 FEET FROM THE APARTMENT BUILDING. ALL OF THE EMPLOYEES WHO CAST BALLOTS WERE WORKING ON THE APARTMENT BUILDING IN WHICH THE POLING STATION WAS LOCATED OR ON AN ADJACENT APARTMENT BUILDING ON THE SAME SITE. NONE OF THESE EMPLOYEES CAME THROUGH THE ENTRANCE WHERE BURIGANA WAS LOCATED AND HE WAS NOT OBSERVED SPEAKING TO ANY OF THE EMPLOYEES.

4. BASED ON THE EVIDENCE, WE FIND NO SUPPORT FOR THE CONTENTION THAT BURIGANA'S PRESENCE AT THE POLLING STATION PRIOR TO THE TAKING OF THE VOTE OR HIS PRESENCE ON THE JOB SITE DURING THE TAKING OF THE VOTE HAD ANY INHIBITING INFLUENCE UPON THE EMPLOYEES CONCERNED. IT FOLLOWS THAT THE INFERENCES WHICH THE APPLICANT SUBMITS THE BOARD SHOULD DRAW FROM BURIGANA'S PRESENCE ARE ENTIRELY UNWARRANTED. THERE IS NOTHING IN THE EVIDENCE WHICH SUGGESTS TO US THAT THE RESULTS OF THE REPRESENTATION VOTE REFLECTS ANYTHING OTHER THAN A VOLUNTARY EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES WHO CAST THEIR BALLOTS.

5. ON THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD NOT MORE THAN FIFTY PER CENT OF THE BALLOTS OF ALL THOSE ELIGIBLE TO VOTE WERE CAST IN FAVOUR OF THE APPLICANT.

6. THE APPLICATION IS THEREFORE DISMISSED.

7. THE BOARD WILL NOT ENTERTAIN AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WITH RESPECT TO ANY OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WITHIN THE PERIOD OF SIX MONTHS FROM THE DATE HEREOF.

8. THE REGISTRAR WILL DESTROY THE BALLOTS CAST IN THE REPRESENTATION VOTE TAKEN IN THIS MATTER FOLLOWING THE EXPIRATION OF 30 DAYS FROM THE DATE OF THIS DECISION UNLESS A STATEMENT REQUESTING THAT THE BALLOTS SHOULD NOT BE DESTROYED IS RECEIVED BY THE BOARD FROM ONE OF THE PARTIES BEFORE THE EXPIRATION OF SUCH 30 DAY PERIOD.

14851-68-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. HART CHEMICAL LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS
P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: TED WOHL, DON MACDONALD FOR THE APPLICANT, NORMAN L. MATHEWS, Q.C., WILLIAM H. OLIVER, ROBERT L. ALLEN FOR THE RESPONDENT, AND NO ONE APPEARING FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN H. D. BROWN AND BOARD MEMBER

J. E. C. ROBINSON: NOVEMBER 20, 1968.

. . .

2. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT GUELPH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND STATIONARY ENGINEERS AND PERSONS PRIMARILY ENGAGED AS THEIR HELPERS, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT THE MAINTENANCE AND LABORATORY STAFF ARE NOT INCLUDED IN THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 2 ABOVE.

4. THERE WAS FILED IN OPPOSITION TO THIS APPLICATION A STATEMENT OF DESIRE SIGNED BY THIRTEEN EMPLOYEES OF THE RESPONDENT, THREE OF WHOM WERE CLAIMED BY THE APPLICANT IN MEMBERSHIP. IF FULL EFFECT WERE GIVEN TO THIS DOCUMENT SUFFICIENT DOUBT WOULD BE CAST UPON THE MEMBERSHIP EVIDENCE SUBMITTED BY THE APPLICANT TO REQUIRE THAT THE BOARD DIRECT THAT A REPRESENTATION VOTE BE HELD. ACCORDINGLY, THE BOARD INQUIRED INTO THE ORIGIN-ATION, PREPARATION AND CIRCULATION OF THE DOCUMENT. FRANK BRIDGES, EMPLOYED BY THE RESPONDENT AS AN OPERATOR, TESTIFIED THAT HE PREPARED THE HEADING IN THE MORNING OF JULY 17TH AT THE HOME OF WILLIAM CARTER WHO ALSO APPEARED AT THE BOARD AND GAVE TESTIMONY IN THIS MATTER. BRIDGES SAID THAT HE WAS ON THE AFTER-NOON SHIFT THAT DAY AND HE SIGNED THE DOCUMENT FIRST AND THEN OBTAINED SIGNATURES APPEARING AS NUMBERS ONE TO SEVEN ON THE DOCUMENT. ALL OF THOSE SIGNATURES WERE OBTAINED AT THE EMPLOYEES' HOMES WHEN THEY WERE OFF WORK. AFTER LUNCH THAT DAY HE GAVE THE DOCUMENT TO WILLIAM CARTER. THE FOLLOWING DAY HE WENT WITH CARTER TO A LAWYER'S OFFICE AND OBTAINED A LETTER FROM THE LAWYER WHICH WAS SENT TO THE BOARD TOGETHER WITH THE PETITION. HE STATED THAT HE HAD NOT DISCUSSED THE PETITION OR THE APPLI-CATION WITH ANYONE FROM MANAGEMENT NOR WAS THERE ANYONE FROM MANAGEMENT PRESENT WHEN HE OBTAINED THE SIGNATURES.

5. WILLIAM CARTER EMPLOYED BY THE RESPONDENT AS A SHIPPER, TESTIFIED THAT BRIDGES WROTE OUT THE HEADING ON THE PETITION AND HE OBTAINED THE DOCUMENT FROM HIM ON THE EVENING OF THE 18TH OF JULY. HE THEN WENT TO EMPLOYEES' HOMES AND OBTAINED SIGNATURES APPEARING AS NUMBERS SEVEN TO THIRTEEN ON THE PETITION. A LETTER WAS TYPED AT THE LAWYER'S OFFICE, SIGNED BY BOTH HE AND BRIDGES AND WAS, ALONG WITH THE PETITION, DELIVERED TO THE BOARD BY BOB PHILLIPS EMPLOYED BY THE RESPONDENT AS A MAINTENANCE MAN. BRIDGES SAID THAT HE WAS NOT WORKING ON THE 18TH OF JULY AND THE PLANT WAS CLOSED ON THE 19TH. HE RECOLLECTION OF THE DATES WAS NOT CLEAR AND ON FURTHER QUESTIONING, THOUGHT HE HAD RECEIVED THE DOCUMENT FROM BRIDGES ON THE AFTERNOON OF THE 17TH OF JULY BUT HE FIRMLY STATED THAT HE WAS PRESENT WHEN THE HEAD-ING WAS PREPARED AND OBTAINED IT FROM BRIDGES THAT SAME DAY AND THE SIGNATURES THAT HE OBTAINED ARE BENEATH THOSE OBTAINED BY BRIDGES. HE AND BRIDGES HAD THE PETITION WITH THE SIGNATURES AFFIXED ON IT WHEN THEY WENT TO SEE THE LAWYER AND HAD THE LETTER TYPED. HIS DAUGHTER IS THE LAWYER'S SECRETARY. HE SAID THAT NO SIGNATURES WERE OBTAINED ON COMPANY PREMISES OR ON COMPANY TIME AND NO ONE FROM MANAGEMENT WAS PRESENT WHEN ANY OF THE SIGNATURES WERE OBTAINED.

6. WE HAVE NO HESITATION IN ACCEPTING THE EVIDENCE OF BRIDGES IN THIS MATTER WHO WAS RESPONSIBLE FOR THE PREPARATION OF THE DOCUMENT AND PART OF ITS CIRCULATION. WHILE THE EVIDENCE OF CARTER WAS GIVEN IN A CONFUSED MANNER IN HIS RECOLLECTION OF DATES, HE APPEARED TO GIVE A CREDIBLE ACCOUNT FOR HIS ACTIONS AND HE WAS NOT SERIOUSLY SHOWN TO BE IN ERROR. THERE IS NO EVIDENCE WHATSOEVER TO ESTABLISH THAT THE RESPONDENT WAS AWARE OF THE PETITION OR TOOK ANY STEPS TO INFLUENCE THE EMPLOYEES IN ANY WAY. THE PETITION WAS INITIATED, PREPARED AND CIRCULATED BY THE EMPLOYEES CONCERNED. WE MUST CONCLUDE, THEREFORE, THAT THE PETITION REPRESENTS THE VOLUNTARY DESIRES OF THOSE EMPLOYEES OF THE RESPONDENT WHO SIGNED IT.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON JULY 22ND, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

DECISION OF BOARD MEMBER P. J. O'KEEFFE: NOVEMBER 20, 1968.

I DISSENT. I HAVE NO HESITATION IN REJECTING THE EVIDENCE OF WILLIAM CARTER. HIS TESTIMONY AS IT RELATES TO HIS PART IN THE CIRCULATION OF THE PETITION WAS NOT ONLY GIVEN IN A CONFUSED AND HESITANT MANNER BUT WAS ALSO CONTRADICTORY.

WILLIAM CARTER, IN MY ESTIMATION, WAS NOT A CREDIBLE WITNESS AND THEREFORE I WOULD NOT GIVE WEIGHT TO THE PETITION AS CASTING DOUBT ON THE MEMBERSHIP POSITION OF THE APPLICANT. I WOULD HAVE CERTIFIED THE APPLICANT OUTRIGHT.

15001-68-R: UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 18 (APPLICANT) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (RESPONDENT) V. CANADIAN UNION OF PUBLIC EMPLOYEES - CLC ONTARIO HYDRO EMPLOYEES UNION, LOCAL 1000 (INTERVENER #1) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (INTERVENER #2).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: S. SIMPSON AND C. GUAGLIANO FOR THE APPLICANT; F. G. HAMILTON, W. H. BARNES AND J. WALKER FOR THE RESPONDENT; NO ONE APPEARING FOR INTERVENER #1; AND F. A. ACTON FOR INTERVENER #2.

DECISION OF THE BOARD: NOVEMBER 6, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE APPLICANT, HEREINAFTER REFERRED TO AS "LOCAL 18", SEEKS TO BECOME THE BARGAINING AGENT FOR CARPENTERS AND CARPENTERS' APPRENTICES EMPLOYED BY THE RESPONDENT SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THAT RANK IN BOARD AREA No. 26 AND FOR A SIMILAR UNIT IN BOARD AREA No. 5.

2. THE RESPONDENT SUBMITS THAT THE EMPLOYEES IN QUESTION WERE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, HEREINAFTER REFERRED TO AS THE "UNITED BROTHERHOOD" AND THE RESPONDENT. THE UNITED BROTHERHOOD ADOPTS THE SAME POSITION. THE AGREEMENT, WHICH RUNS FROM AUGUST 22, 1967 UNTIL AUGUST 21, 1968, INCLUSIVE, PROVIDES IN ARTICLE 1.1 THAT:

THE BARGAINING UNIT UNDER THIS AGREEMENT SHALL COMPRISE:

- (A) ALL FIELD CARPENTERS, SHEET STEEL PILE DRIVERS, SHEET STEEL PILE DRIVER BURNERS, DIVERS, MILLWRIGHTS, AND APPRENTICES EMPLOYED BY THE GENERATION PROJECTS DIVISION AND THE LINES AND STATIONS CONSTRUCTION DEPARTMENT OF THE TRANSMISSION AND DISTRIBUTION PROJECTS DIVISION OF THE EMPLOYER, EXCEPTING THOSE DESCRIBED HEREUNDER:

. . .

THE EXCEPTIONS REFERRED TO ARE NOT MATERIAL FOR PRESENT PURPOSES. THE EMPLOYEES AFFECTED BY THE APPLICATION ARE EMPLOYED EITHER BY THE GENERATION PROJECTS DIVISION OR BY THE LINES AND STATIONS CONSTRUCTION DEPARTMENT OF THE TRANSMISSION AND DISTRIBUTION PROJECTS DIVISION OF THE RESPONDENT.

3. THE RESPONDENT AND THE UNITED BROTHERHOOD TAKE THE FURTHER POSITION THAT, HAVING REGARD TO THE EVIDENCE AND TO EARLIER BOARD DECISIONS WHICH WILL BE REFERRED TO LATER ON, THE BARGAINING UNIT PROPOSED BY THE APPLICANT IS NOT AN APPROPRIATE ONE. THE APPLICANT'S POSITION IS THAT THE AGREEMENT DOES NOT COVER THE EMPLOYEES AFFECTED BY THE APPLICATION OR, AT ALL EVENTS, THOSE EMPLOYED ON THE RESPONDENT'S NANTICOKE PROJECT. IN THE ALTERNATIVE, THE APPLICANT SUBMITS THAT, IF THE AGREEMENT DOES COVER THE EMPLOYEES IN QUESTION, THE BARGAINING UNITS PROPOSED ARE APPROPRIATE IN THE CIRCUMSTANCES OF THIS CASE.

4. THE FIRST QUESTION IS, THEN, WHETHER THE EMPLOYEES AFFECTED BY THIS APPLICATION WERE COVERED BY THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED BROTHERHOOD. AS NOTED ABOVE, THE EMPLOYEES COVERED BY THE AGREEMENT ARE FIELD CARPENTERS AND THEIR APPRENTICES EMPLOYED BY THE GENERATION PROJECTS DIVISION AND THE LINES AND STATIONS CONSTRUCTION DEPARTMENT OF THE TRANSMISSION AND DISTRIBUTION PROJECTS DIVISION OF THE RESPONDENT. ARTICLE 1.1 CONTAINS NO GEOGRAPHIC LIMITATION AND, HAVING REGARD TO THE NATURE OF THE OPERATIONS OF THE RESPONDENT, IT WOULD APPEAR THAT IT WAS INTENDED TO COVER THE CARPENTER EMPLOYEES OF EACH OF THE DIVISIONS THROUGHOUT THE PROVINCE OF ONTARIO.

5. THE AGREEMENT CONTAINS THE FOLLOWING CLAUSES WHICH APPEAR TO HAVE SOME BEARING ON THIS QUESTION:

ARTICLE 2.1 PROVIDES THAT MEETINGS WILL BE HELD AT INTERVALS OF THREE OF FOUR MONTHS AT THE PROJECT SITES IN NORTHERN, EASTERN AND WESTERN ONTARIO.

ARTICLE 3.1 PROVIDES THAT THE PARTIES RECOGNIZE "THAT IT IS ESSENTIAL TO PRACTICE UNIFORMITY OF APPLICATION OF THIS AGREEMENT WHEREVER EMPLOYEES ARE WORKING IN THE PROVINCE" AND GOES ON TO PROVIDE FOR A STANDING COMMITTEE. [EMPHASIS ADDED.]

ARTICLE 5.1 MAKES PROVISION FOR THE DESIGNATION OF LOCAL UNION REPRESENTATIVES TO HANDLE DAY-TO-DAY ADMINISTRATION OF THE AGREEMENT ON THE BASIS OF NOT MORE THAN TWO REPRESENTATIVES FOR EACH PROJECT OR LINES AND STATIONS CONSTRUCTION ZONE. IDENTIFICATION CARDS ARE TO BE ISSUED TO SUCH REPRESENTATIVES.

ARTICLES 6 TO 22 AND ARTICLES 24 AND 25 DEAL WITH SUCH MATTERS AS WORK ASSIGNMENTS AND JURISDICTIONAL BOUNDARIES,

GRIEVANCE AND ARBITRATION PROCEDURES, EMPLOYMENT PRACTICES, STATUTORY HOLIDAYS, VACATION ALLOWANCES, SENIORITY, PAY PERIODS, REST PERIODS, WELFARE AND PENSION PLANS, INCLEMENT WEATHER, REPORTING ALLOWANCES, TOOLS AND CLOTHING, UNION STEWARDS, APPRENTICESHIP TRAINING AND HOURS OF WORK.

IT IS TO BE NOTED THAT WITH RESPECT TO THE MATTERS IN THE AGREEMENT SET OUT ABOVE, NO DISTINCTION IS DRAWN BETWEEN THE GENERATION PROJECTS DIVISION AND THE LINES AND STATIONS CONSTRUCTION DEPARTMENT.

6. ARTICLE 23 DEALS WITH SPECIAL PROJECTS AND PROVIDES THAT THE RESPONDENT WILL ADVISE THE UNITED BROTHERHOOD IN ADVANCE OF NEW MAJOR CONSTRUCTION UNDERTAKINGS AND DESIGNATES AS A SPECIAL PROJECT ONE WHICH WILL REQUIRE MORE THAN A YEAR TO COMPLETE AND COMPRISING A TOTAL WORK FORCE OF MORE THAN 100 MEN AT ONE TIME. IN SUCH CIRCUMSTANCES THE RESPONDENT IS TO CONVENE A MEETING TO DISCUSS THE PRELIMINARY DETAILS OF THE PROPOSED WORK.

ARTICLE 27 PROVIDES FOR THE RATES OF PAY AT NAMED SPECIAL PROJECTS AND AT LINES AND STATIONS CONSTRUCTION SITES.

ARTICLES 28 TO 30 DEAL WITH OVERTIME, SHIFT DIFFERENTIAL RATES, BOARD, TRAVEL AND PERIODIC RETURN FOR NAMED SPECIAL PROJECTS AND LINES AND STATIONS.

ARTICLES 23 AND 27 TO 30 ARE THE ONLY ONES IN THE COLLECTIVE AGREEMENT WHICH DIFFERENTIATE BETWEEN SPECIAL PROJECTS AND LINES AND STATIONS. NANTICOKE IS NOT NAMED IN THE AGREEMENT AS A SPECIAL PROJECT.

7. ON THE DATE OF THE MAKING OF THE APPLICATION, AUGUST 21, 1968, THERE WERE CARPENTERS EMPLOYED BY THE LINES AND STATIONS CONSTRUCTION DEPARTMENT WORKING IN BOARD AREAS 26 AND/OR 5. WE ARE SATISFIED THAT ON THAT DATE, WHICH, INCIDENTALLY, WAS THE LAST DAY OF OPERATION OF THE COLLECTIVE AGREEMENT, SUCH EMPLOYEES WERE COVERED BY THE SAID AGREEMENT.

8. THE SUBMISSIONS OF THE APPLICANT WERE IN THE MAIN DIRECTED AT THE CARPENTERS EMPLOYED ON THE NANTICOKE PROJECT WHICH IS LOCATED IN BOARD AREA No. 5. THESE EMPLOYEES ARE EMPLOYED BY THE GENERATION PROJECTS DIVISION WHICH, TOGETHER WITH THE LINES AND STATIONS CONSTRUCTION DEPARTMENT, IS RESPONSIBLE FOR ALL NEW CAPITAL CONSTRUCTION, WHETHER SPECIAL PROJECTS OR NOT. THERE HAD BEEN SOME DISCUSSION ABOUT THIS CONTEMPLATED PROJECT BETWEEN THE RESPONDENT AND THE UNITED BROTHERHOOD EARLY IN 1967, BUT FURTHER DISCUSSIONS WERE HALTED BY A

STRIKE OF RESPONDENT'S EMPLOYEES UNTIL SEPTEMBER 1967, WHEN TALKS AGAIN COMMENCED. NOTHING WAS SETTLED IN THESE DISCUSSIONS CONCERNING RATES OF PAY, OVERTIME ETC., BY THE END OF NOVEMBER, 1967 AND THIS PRESUMABLY ACCOUNTS FOR THE OMISSION OF NANTICOKE AS A SPECIAL PROJECT IN THE COLLECTIVE AGREEMENT WITH WHICH WE ARE HERE CONCERNED AND WHICH WAS EXECUTED ON NOVEMBER 20, 1967. THE FIRST CARPENTER EMPLOYEES WERE HIRED ON THE PROJECT IN DECEMBER, 1967 OR JANUARY, 1968. THE PROJECT IS EXPECTED TO LAST FOR FIVE YEARS AND THE WORK FORCE AT PRESENT IS RELATIVELY SMALL ALTHOUGH GROWING. IT IS EXPECTED THAT THE WORK FORCE WILL EVENTUALLY APPROXIMATE SOME 2500 EMPLOYEES, INCLUDING EMPLOYEES OF SUBCONTRACTORS, AND THAT THE CARPENTERS' WORK FORCE MAY WELL RUN INTO 300 PERSONS.

9. ON JANUARY 25, CHARLES GUAGLIANO, FINANCIAL SECRETARY AND BUSINESS REPRESENTATIVE OF THE APPLICANT, WROTE TO MR. F. A. ACTON, THE INTERNATIONAL REPRESENTATIVE OF THE UNITED BROTHERHOOD, POINTING OUT THAT THE NANTICOKE PROJECT LAY WITHIN LOCAL 18'S JURISDICTION AND GIVING CERTAIN INFORMATION WITH RESPECT TO ITS MEMBERSHIP DUES. THE LETTER WENT ON TO REQUEST MR. ACTON TO HAVE THE RESPONDENT DEDUCT THE DUES OF ITS MEMBERS AT THE SOURCE AND REMIT THEM TO LOCAL 18'S OFFICE. ON FEBRUARY 3RD, MR. ACTON WROTE TO MR. WALTER CHENERY, THE MANAGER OF LABOUR RELATIONS FOR THE RESPONDENT, INFORMING HIM THAT CHARLES GUAGLIANO AND TOM FENWICK WOULD BE THE UNITED BROTHERHOOD'S TWO REPRESENTATIVES ON THE NANTICOKE PROJECT AND, FURTHER, GIVING INSTRUCTIONS WITH RESPECT TO CHECK-OFF. MR. GUAGLIANO ADMITTED IN EVIDENCE THAT HE HAD BEEN ISSUED AN IDENTIFICATION CARD TO PERMIT ENTRY TO THE SITE. ON MAY 31, 1968 MR. ACTON AGAIN WROTE TO MR. CHENERY GIVING NOTICE PURSUANT TO ARTICLE 31 OF THE COLLECTIVE AGREEMENT THAT THE UNITED BROTHERHOOD WISHED TO COMMENCE BARGAINING WITH A VIEW TO AMENDING THE AGREEMENT WHICH WOULD CEASE TO OPERATE AFTER AUGUST 21ST. ON AUGUST 1ST, 1968 WRITTEN PROPOSALS WERE SUBMITTED BY MR. ACTON IN CONNECTION WITH THE PROPOSED AMENDMENTS. IN THIS LETTER REFERENCE WAS MADE TO A NUMBER OF SPECIAL PROJECTS, INCLUDING NANTICOKE.

10. THE EVIDENCE IS THAT SOME FOUR OR FIVE MEETINGS WERE HELD IN CONNECTION WITH THE NANTICOKE PROJECT TO DISCUSS THE MATTERS DEALT WITH IN ARTICLES 27 TO 30 OF THE COLLECTIVE AGREEMENT, THAT IS, RATES OF PAY, OVERTIME, SHIFT DIFFERENTIAL RATES AND BOARD, TRAVEL AND PERIODIC RETURN. THESE WERE THE ONLY MATTERS DISCUSSED. NO FORMAL WRITTEN PROPOSALS WERE MADE. AGREEMENT WAS REACHED ON SOME MATTERS BUT NOT ON OTHERS. MR. GUAGLIANO ATTENDED ONE OF THE MEETINGS IN APRIL, 1968. IT WOULD APPEAR THAT DISCUSSIONS WITH RESPECT TO THESE PARTICULAR MATTERS BECAME MERGED WITH NEGOTIATIONS FOR THE RENEWAL OF THE COLLECTIVE AGREEMENT WHICH COMMENCED IN LATE AUGUST. ALTHOUGH INVITED TO DO SO, MR. GUAGLIANO DID NOT ATTEND THE LATE AUGUST MEETING.

11. THE APPLICANT'S SUBMISSIONS WITH RESPECT TO THE COVERAGE OF THE COLLECTIVE AGREEMENT WERE ALONG TWO GENERAL LINES. THE FIRST WAS THAT THE AGREEMENT DOES NOT COVER MEMBERS OF THE APPLICANT, ESPECIALLY THOSE EMPLOYEES AT THE NANTICOKE PROJECT AND, FURTHER, THAT LOCAL 18, BEING A SEPARATE ENTITY FROM THE UNITED BROTHERHOOD, WAS NOT BOUND BY THE COLLECTIVE AGREEMENT. WHILE THE COLLECTIVE AGREEMENT ENVISAGES THAT ITS ADMINISTRATION WILL BE HANDLED THROUGH UNITED BROTHERHOOD LOCAL UNION OFFICIALS, IT DOES NOT, IN OUR VIEW, PURPORT TO BE BINDING ON THE UNITED BROTHERHOOD LOCAL UNIONS IN THE PROVINCE. IN OTHER WORDS, THERE IS NO SUGGESTION THAT THE LOCAL UNIONS HAVE BARGAINING RIGHTS AS A RESULT OF THE COLLECTIVE AGREEMENT. RATHER, THOSE BARGAINING RIGHTS ARE HELD BY THEIR PARENT, THE UNITED BROTHERHOOD. WHILE THE RESPONDENT AGREES TO THE EMPLOYMENT OF COMPETENT RESIDENT LOCAL UNION MEMBERS, IT IS CLEAR FROM ARTICLE 11, DEALING WITH EMPLOYMENT PRACTICES, THAT THESE ARE NOT THE ONLY PERSONS WHO MAY BE HIRED BY THE RESPONDENT. SIMILARLY, THE UNION SECURITY PROVISIONS MERELY REQUIRE THAT THE EMPLOYEES BE MEMBERS OF THE UNITED BROTHERHOOD AND NOT ANY PARTICULAR LOCAL THEREOF. AGAIN, THERE IS NO REQUIREMENT THAT, IF A CHECK-OFF SYSTEM IS INSTITUTED AT THE REQUEST OF THE UNITED BROTHERHOOD, THE DUES BE PAID TO THE LOCAL. THE RESPONDENT MERELY AGREES THAT IT WILL TRANSMIT THE MONEY SO COLLECTED TO THE DESIGNATED OFFICIALS OF THE UNITED BROTHERHOOD. WHILE WE AGREE WITH THE APPLICANT THAT THE COLLECTIVE AGREEMENT IN QUESTION IS NOT BINDING ON IT, THIS DOES NOT DETRACT FROM THE FACT THAT ITS PARENT, THE UNITED BROTHERHOOD, MAY NEVERTHELESS HOLD BARGAINING RIGHTS FOR CARPENTERS EMPLOYED IN BOARD AREAS 5 AND 26. WE HAVE ALREADY FOUND THAT THEY DO SO WITH RESPECT TO THE CARPENTER EMPLOYEES OF THE LINES AND STATIONS CONSTRUCTION DEPARTMENT.

12. THE REAL QUESTION, THEREFORE, IS WHETHER THE NANTICOKE PROJECT IS COVERED BY THE COLLECTIVE AGREEMENT. AS WE INDICATED ABOVE IN PARAGRAPH 4, THE LACK OF A GEOGRAPHIC LIMITATION IN ARTICLE 1.1 SUPPORTS THE CONTENTION THAT IT WAS INTENDED TO APPLY THROUGHOUT THE PROVINCE. IN OUR VIEW THIS IS FURTHER SUPPORTED BY THE PROVISIONS OF ARTICLES 2.1 AND 3.1. THE APPLICANT SUBMITS, HOWEVER, THAT BECAUSE THE AGREEMENT DOES NOT REFER TO THE NANTICOKE PROJECT, IT IS NOT COVERED BY THE AGREEMENT.

13. IT SEEMS CLEAR, HOWEVER, THAT THE PROJECT IS A SPECIAL PROJECT AS IS ENVISAGED BY ARTICLE 23 OF THE AGREEMENT. FURTHER, THE EVIDENCE ESTABLISHES THAT THE CARPENTERS EMPLOYED ON THE NANTICOKE PROJECT ARE EMPLOYEES OF THE GENERATION PROJECTS DIVISION WHICH IS RESPONSIBLE FOR THE CONSTRUCTION OF SUCH PROJECTS. MOREOVER, IN OUR VIEW, ARTICLE 1.1 PROVIDES FOR RECOGNITION THROUGHOUT THE PROVINCE. FINALLY, AS WE NOTED ABOVE, THE COLLECTIVE AGREEMENT CONTAINS A GOOD MANY PROVISIONS WHICH ARE APPLICABLE TO ALL THE EMPLOYEES COVERED BY THE AGREEMENT, REGARDLESS OF WHETHER THEY ARE EMPLOYED IN THE GENERATION PROJECTS DIVISION OR

THE LINES AND STATIONS CONSTRUCTION DEPARTMENT. IT IS ONLY IN RELATION TO CERTAIN MATTERS, THAT IS, WAGES, OVERTIME, ETC., THAT THERE ARE SPECIAL PROVISIONS FOR LINES AND STATIONS AND SPECIAL PROJECTS. IF THESE TERMS OF EMPLOYMENT HAVE NOT BEEN SETTLED WITH RESPECT TO A PARTICULAR PROJECT, THERE WOULD BE NO POINT IN INCORPORATING ANY REFERENCE TO THAT PROJECT INTO THE AGREEMENT. THIS, OF COURSE, WAS THE SITUATION WITH RESPECT TO THE NANTICOKE PROJECT.

14. THE CONDUCT OF THE PARTIES IS CONSISTENT WITH THEIR SUBMISSION THAT THE AGREEMENT COVERED THE PROJECT. THUS THERE WERE DISCUSSIONS AND NEGOTIATIONS WITH RESPECT TO WAGES, ETC., AS CONTEMPLATED BY ARTICLE 23 AND LOCAL UNION REPRESENTATIVES WERE DESIGNATED AND ISSUED IDENTITY CARDS, AS PROVIDED FOR IN ARTICLE 5.1. FURTHER, DISCUSSIONS TOOK PLACE RELATING TO CHECK-OFF AND PAYMENT OF DUES DIRECTLY TO LOCAL 18. WHILE THIS APPARENTLY DID NOT IN FACT TAKE PLACE FOR SOME PERIOD OF TIME, IT IS TO BE NOTED THAT ARTICLE 7 ONLY REQUIRES THE RESPONDENT TO INSTITUTE THE CHECK-OFF WHEN REQUESTED BY THE UNITED BROTHERHOOD. THERE IS NO EVIDENCE WITH RESPECT TO WHEN THE REQUEST WAS MADE. WHILE IT APPEARS THAT MEMBERS OF LOCAL 18 WERE NOT HIRED BY THE RESPONDENT THROUGH LOCAL 18 OFFICES, ALTHOUGH THIS SEEMS TO BE CONTEMPLATED BY ARTICLE 11.1 OF THE AGREEMENT, WE ATTACH NO SPECIAL SIGNIFICANCE TO THIS OMISSION IN THE LIGHT OF ALL THE OTHER CIRCUMSTANCES.

15. ON CONSIDERING ALL OF THE FOREGOING, IT IS APPARENT THAT THE SITUATION BEFORE US IS NOT UNLIKE THAT WHICH ARISES IN A COLLECTIVE AGREEMENT WHICH APPLIES TO ALL EMPLOYEES OF A PARTICULAR COMPANY AND IN WHICH WAGES FOR SPECIFIC CLASSIFICATIONS ARE CONTAINED IN THE COLLECTIVE AGREEMENT WITH THE PROVISION THAT SHOULD NEW CLASSIFICATIONS BE ESTABLISHED THE PARTIES WILL BARGAIN WITH RESPECT TO THE WAGES FOR THE NEW CLASSIFICATIONS. IN EFFECT, THIS IS WHAT THE PARTIES TO THIS COLLECTIVE AGREEMENT HAVE DONE WITH RESPECT TO SPECIAL PROJECTS. IN THE RESULT, THEN, WE FIND THAT THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED BROTHERHOOD COVERED ALL THE EMPLOYEES AFFECTED BY THIS APPLICATION AND THAT THE UNITED BROTHERHOOD IS THE BARGAINING AGENT FOR SUCH EMPLOYEES.

16. THERE REMAINS FOR CONSIDERATION, THEN, THE QUESTION AS TO WHETHER THE BARGAINING UNITS PROPOSED BY THE APPLICANT ARE APPROPRIATE IN ALL THE CIRCUMSTANCES OF THIS CASE. A SOMEWHAT SIMILAR APPLICATION WAS MADE TO THE BOARD IN 1966 BY LOCAL UNION 46 OF THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA. SEE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO, O.L.R.B. MONTHLY REPORT, NOVEMBER 1966, PAGE 596, HEREINAFTER REFERRED TO AS THE LOCAL 46 CASE. IN THAT CASE LOCAL UNION 46 SOUGHT CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF PLUMBERS, PIPEFITTERS,

STEAMFITTERS, PIPEWELDERS AND APPRENTICES EMPLOYED BY THE RESPONDENT IN BOARD AREA No. 8. THE EMPLOYEES AFFECTED WERE AT THAT TIME REPRESENTED BY LOCAL 46'S PARENT ORGANIZATION, THE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA UNDER A COLLECTIVE AGREEMENT COVERING PLUMBERS, ETC., IN THE RESPONDENT'S CONSTRUCTION DIVISION ON A PROVINCE-WIDE BASIS. THE BOARD REJECTED THE APPLICATION. THE DECISION IN THAT CASE REFERS AT SOME LENGTH TO THE ORGANIZATIONAL SET-UP OF THE RESPONDENT, TOGETHER WITH ITS COLLECTIVE BARGAINING HISTORY. MUCH OF THE EVIDENCE IN THE INSTANT CASE WAS ALONG THE SAME LINES AND WE DO NOT PROPOSE TO REPEAT IT HERE EXCEPT WHERE IT DIFFERS FROM THE PICTURE PRESENTED IN THE LOCAL 46 CASE.

17. THE FIRST DIFFERENCE APPEARS TO BE IN THE ELIMINATION OF THE CONSTRUCTION DIVISION OF THE RESPONDENT. PREVIOUSLY THE FIELD FORCES AND THE HEAD OFFICE FORCES HAD BEEN SEPARATED, THE FIELD FORCES FALLING UNDER THE CONSTRUCTION DIVISION. THESE TWO OPERATIONS HAVE NOW BEEN AMALGAMATED. HOWEVER, THE EVIDENCE IS THAT THIS IS A CHANGE IN NAME ONLY AND THAT THE PERSON PREVIOUSLY IN CHARGE IS STILL IN CHARGE AND THE FIELD WORK IS STILL CONDUCTED IN THE SAME FASHION. THERE HAVE BEEN NO CHANGES IN CONSTRUCTION METHODS OR IN THE EMPLOYEES. INSTEAD OF THE CONSTRUCTION DIVISION, HOWEVER, THE TERMINOLOGY NOW IS, AS SET OUT IN ARTICLE 1.1 OF THE AGREEMENT, THE GENERATION PROJECTS DIVISION AND THE LINES AND STATIONS CONSTRUCTION DEPARTMENT OF THE TRANSMISSION AND DISTRIBUTION PROJECTS DIVISION.

18. THE SECOND DIFFERENCE CONCERNS THE COLLECTIVE BARGAINING PRACTICES OF THE RESPONDENT. AS IS NOTED IN THE EARLIER DECISION, FROM 1954 ON THE RESPONDENT BARGAINED WITH A COUNCIL OF TRADE UNIONS REPRESENTING AT DIFFERENT TIMES APPROXIMATELY 14 TO 17 PARENT TRADE UNIONS. THIS BARGAINING WAS ON A PROVINCE-WIDE BASIS. AT THE TIME OF THE LAST MENTIONED DECISION THE UNITED ASSOCIATION HAD BROKEN AWAY FROM THE COUNCIL AND NEGOTIATED A SEPARATE COLLECTIVE AGREEMENT ON A PROVINCE-WIDE BASIS. AT THAT TIME THE OFFICE EMPLOYEES INTERNATIONAL UNION ALSO HAD A PROVINCE-WIDE COLLECTIVE AGREEMENT SEPARATE FROM THE ALLIED CONSTRUCTION COUNCIL. THE EVIDENCE IN THE PRESENT CASE IS THAT THE RESPONDENT STILL BARGAINS WITH THE ALLIED CONSTRUCTION COUNCIL WHICH NOW, HOWEVER, CONSISTS OF ONLY TEN UNIONS. THAT AGREEMENT COVERS THE PROVINCE OF ONTARIO. IN ADDITION TO THIS AGREEMENT, THE RESPONDENT HAS SEPARATE COLLECTIVE AGREEMENTS WITH THE UNITED ASSOCIATION, THE UNITED BROTHERHOOD, THE HOTEL AND RESTAURANT EMPLOYEES' UNION AND THE OFFICE AND PROFESSIONAL EMPLOYEES INTERNATIONAL UNION. THESE LATTER AGREEMENTS ARE ALSO ON A PROVINCE-WIDE BASIS.

19. IN THE LOCAL 46 CASE REFERENCE IS MADE TO THE FACT THAT AT NO TIME DID THE RENEGOTIATION OF ANY OF THE AGREEMENTS WHICH THE RESPONDENT HAD WITH THE ALLIED CONSTRUCTION COUNCIL OR WITH THE INDIVIDUAL UNIONS LEAD TO STRIKE ACTION. SINCE THAT DECISION A MAJOR WORK STOPPAGE OCCURRED ON THE RENEGOTIATION OF THE AGREEMENTS. THE EVIDENCE IS THAT THE MATTERS IN DISPUTE WERE ONES OF PRINCIPLE AND NOT LOCAL ISSUES. THEY INVOLVED SUCH THINGS AS SUB-CONTRACTING, THE CLOSED SHOP, SETTLEMENT OF JURISDICTIONAL DISPUTES BY THE NATIONAL JOINT BOARD IN WASHINGTON, D.C., THE INCLUSION OF NON-WORKING FOREMEN IN THE BARGAINING UNIT AND LIMITATIONS ON PREFABRICATED WORK. AT THE PRESENT TIME BARGAINING IS GOING ON WITH RESPECT TO THE RENEGOTIATION OF ALL THESE COLLECTIVE AGREEMENTS.

20. THE APPLICANT SEEKS TO DISTINGUISH THIS CASE FROM THE LOCAL 46 CASE ON TWO MAIN GROUNDS. THE FIRST OF THESE IS THAT THERE HAS BEEN A BREAKDOWN IN THE STABILITY OF THE BARGAINING RELATIONSHIP AND IN THE PATTERN OF COLLECTIVE BARGAINING WHICH THE RESPONDENT HAS HAD SINCE THE EARLY 1950'S AND WHICH WAS REVIEWED AT SOME LENGTH IN THE LOCAL 46 CASE. THE APPLICANT POINTS TO THE STRIKE WHICH TOOK PLACE IN 1967 AND TO THE FACT THAT SEVERAL UNIONS HAVE WITHDRAWN FROM THE ALLIED CONSTRUCTION COUNCIL. HE ALSO REFERS TO PROSECUTION PROCEEDINGS BY THE RESPONDENT AGAINST ONE OF THE UNIONS IN THE ALLIED COUNCIL. ON THIS LATTER POINT IT IS NOTED THAT THE PROSECUTION WAS LAUNCHED IN CONNECTION WITH AN ILLEGAL STRIKE AND WE FAIL TO SEE HOW THIS CONSTITUTES ANY EVIDENCE OF A DISRUPTION IN THE ESTABLISHED PATTERN OF BARGAINING. ON THE FIRST POINT, THE MAJOR STRIKE, THIS IS THE FIRST IN A LONG HISTORY OF NEGOTIATIONS. FURTHER, THE STRIKE WAS OVER POLICY MATTERS AND DID NOT RELATE TO LOCAL ISSUES OF PARTICULAR CONCERN TO LOCAL TRADE UNIONS. WHILE THE WITHDRAWAL OF SOME OF THE UNIONS FROM THE ALLIED CONSTRUCTION COUNCIL IS INDICATIVE OF SOME UNREST THERE, THE FACT NEVERTHELESS REMAINS THAT THE UNIONS WHICH WITHDREW FROM THE COUNCIL HAVE CONTINUED TO BARGAIN ON A PROVINCE-WIDE BASIS AND THERE IS NO DISRUPTION OR CHANGE IN THAT PATTERN.

21. IN THE LOCAL 46 CASE THE BOARD REFERS TO CERTAIN EVIDENCE OF UNREST AMONG THE MEMBERS OF LOCAL 46, ALLEGEDLY BROUGHT ON BY DIFFERENCES IN LOCAL 46'S COLLECTIVE AGREEMENTS AND THE ONE THEIR MEMBERS WERE UNDER WHEN EMPLOYED BY THE RESPONDENT COUNSEL IN THE PRESENT CASE RELIES ON DIFFERENCES IN LOCAL 18'S AGREEMENTS WITH LOCAL CONTRACTORS AND ESPECIALLY THOSE DEALING WITH JURISDICTIONAL DISPUTES AND SUB-CONTRACTING. BUT THERE IS NO EVIDENCE OF UNREST. THE ONLY EVIDENCE ON THIS POINT IS THAT THE FINANCIAL SECRETARY OF THE LOCAL WAS FEARFUL THAT THESE DIFFERENCES MAY CAUSE DIFFICULTIES IN THE FUTURE ON THE NANTI-COKE PROJECT. THIS IS SHEER SPECULATION. OTHER LOCALS OF THE UNITED BROTHERHOOD HAVE LIVED UNDER THE AGREEMENT FOR MANY YEARS

AND THERE IS NO EVIDENCE TO SUGGEST THAT THESE MATTERS CAUSED ANY DIFFICULTIES. RATHER, THERE IS EVIDENCE THAT DEBATE ON WORK ASSIGNMENT PROBLEMS DOES OCCUR DAILY AND MR. WALKER, THE LABOUR RELATIONS COORDINATOR OF THE RESPONDENT, TESTIFIED THAT IN HIS EXPERIENCE JURISDICTIONAL DISPUTES OCCUR WITH LESS FREQUENCY AND RESULT IN LESS WORK STOPPAGES THAN IN PRIVATE INDUSTRY. SO FAR AS THE SUB-CONTRACTING ISSUE IS CONCERNED, THIS WAS A MATTER DEALT WITH IN NEGOTIATIONS WITH THE UNITED BROTHERHOOD FOR THE LAST AGREEMENT. WHILE THE UNION WAS UNSUCCESSFUL ON THIS POINT, NO EVIDENCE WAS BROUGHT FORWARD IN THIS CASE TO SUGGEST THAT THIS CAUSED ANY PROBLEMS IN THE ADMINISTRATION OF THE CONTRACT.

22. EVIDENCE WAS ALSO LED BY THE APPLICANT TO SHOW THAT LOCAL 18 HAD NOT BEEN CONSULTED IN CONNECTION WITH THE ADMINISTRATION OF EARLIER COLLECTIVE AGREEMENTS. AGAIN, HOWEVER, THERE WAS NO EVIDENCE TO INDICATE THAT LOCAL 18 IN ANY WAY COMPLAINED ABOUT THIS SITUATION. THE FACT OF THE MATTER IS THAT NO LARGE PROJECTS HAVE BEEN UNDERTAKEN BY THE RESPONDENT IN THE GEOGRAPHIC JURISDICTION OF LOCAL 18. IT WAS ONLY WHEN THE NANTICOKE PROJECT WAS STARTED THAT LOCAL 18 SHOWED ANY INTEREST IN THE RESPONDENT'S COLLECTIVE BARGAINING RELATIONSHIP WITH THE UNITED BROTHERHOOD. FURTHERMORE, THERE IS NO EVIDENCE THAT THE MATTERS OVER WHICH THE FINANCIAL SECRETARY EXPRESSED CONCERN WERE EVER RAISED WITH THE RESPONDENT DIRECTLY OR THROUGH THE UNITED BROTHERHOOD. MOREOVER, THE FINANCIAL SECRETARY CHOSE NOT TO ATTEND THE BARGAINING SESSIONS ON THE RENEGOTIATION OF THE AGREEMENT BETWEEN THE RESPONDENT AND THE UNITED BROTHERHOOD, ALTHOUGH INVITED TO DO SO. FINALLY, THERE IS NO EVIDENCE TO SUGGEST THAT A MORE STABLE RELATIONSHIP WOULD RESULT IF THE PRESENT APPLICATION WERE GRANTED THAN THE RELATIONSHIP WHICH HAS EXISTED OVER THE YEARS AND ON WHICH THERE IS A GOOD DEAL OF EVIDENCE.

23. IN THE LOCAL 46 CASE THE BOARD SAID:

ARE WE THEN, IN THE CIRCUMSTANCES OF THIS CASE, TO DISRUPT THIS ESTABLISHED PATTERN OF COLLECTIVE BARGAINING ON A PROVINCE-WIDE BASIS? ARE WE TO ESTABLISH A PRECEDENT WHICH WOULD SURELY OPEN THE DOOR FOR ANY LOCAL UNION IN THE PROVINCE OF ANY OF THE 15 UNIONS PRESENTLY CONSTITUTING THE ALLIED CONSTRUCTION COUNCIL TO CARVE OUT LOCAL BARGAINING RIGHTS?

IN OUR VIEW WE ARE FACED IN THE PRESENT CASE WITH EXACTLY THE SAME QUESTIONS. VIEWING THE EVIDENCE AS A WHOLE IN THE LIGHT OF THE PAST COLLECTIVE BARGAINING EXPERIENCE, WE ARE SATISFIED THAT THIS

THAT THIS IS A CASE IN WHICH WE SHOULD EXERCISE OUR DISCRETION UNDER SECTION 6(2) OF THE ACT AND NOT APPLY THE EARLIER PROVISIONS OF THAT SUBSECTION UNDER WHICH THE BARGAINING UNITS PROPOSED BY THE APPLICANT WOULD BE DEEMED TO BE APPROPRIATE. IN ALL THE CIRCUMSTANCES IT IS OUR FINDING THAT SUCH UNITS ARE NOT APPROPRIATE FOR COLLECTIVE BARGAINING.

24. IN THE RESULT, THEREFORE, THIS APPLICATION IS DISMISSED.

15128-68-R: INTERNATIONAL MOLDERS & ALLIED WORKERS UNION (APPLICANT)
V. VR/WESSON LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: J. SACK AND K. SMITH FOR THE APPLICANT, C.R. OSLER, Q.C., AND H. B. IRON FOR THE RESPONDENT, W.I.C. BINNIE, S. LATKOLIK, E. BEARDELKI AND H. FIETKAU FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 18, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH AN ALLEGATION WAS MADE BY AN EMPLOYEE THAT ONE OF THE APPLICANT'S ORGANIZERS USED THREATS AND COERCION IN AN ATTEMPT TO CAUSE THE EMPLOYEE TO JOIN AND SUPPORT THE APPLICANT UNION.

2. THE EVIDENCE RELATING TO THIS ALLEGATION MAY BE SUMMARIZED AS FOLLOWS. MR. LATKOLIK, ONE OF THE RESPONDENT'S EMPLOYEES (HEREINAFTER REFERRED TO AS "L") WAS CONTACTED AT HIS HOME AND WAS ASKED TO BECOME A MEMBER OF THE APPLICANT UNION BY MR. ANDRZEGEWSKI, ONE OF THE APPLICANT'S VOLUNTEER ORGANIZERS (HEREINAFTER REFERRED TO AS "A"). "A" WAS EMPLOYED BY ANOTHER EMPLOYER AND WAS THE FINANCIAL SECRETARY OF THE LOCAL UNION OF THE APPLICANT AT THE PLANT WHERE HE WORKED. "A" HAD PREVIOUSLY ASSISTED THE APPLICANT IN TWO OTHER ORGANIZING CAMPAIGNS. "A" WAS NOT PAID FOR HIS EFFORTS ON BEHALF OF THE APPLICANT IN THIS MATTER.

3. "L" TESTIFIED THAT WHEN "A" CALLED ON "L" AT HIS HOME "L" SUGGESTED THAT "L" TRY TO ARRANGE A MEETING WITH ABOUT A DOZEN OF HIS FELLOW EMPLOYEES, AT WHICH MEETING "A" WOULD HAVE AN OPPORTUNITY TO FULLY EXPLAIN THE ADVANTAGES OF JOINING THE APPLICANT UNION. "L" STATED THAT AT THE TIME OF HIS FIRST DISCUSSION WITH "A" HE WAS UNCOMMITTED AND REFUSED TO SIGN A MEMBERSHIP CARD AS REQUESTED BY "A" WITHOUT THE BENEFIT OF A FULL DISCUSSION OF THE UNION WITH OTHER EMPLOYEES AT A MEETING HELD FOR THAT PURPOSE.

IT WAS ARRANGED THAT "A" WOULD REATTEND AT "L'S" HOME TWO DAYS LATER AND IN THE INTERIM "L" WOULD CONTACT SOME OF HIS FELLOW EMPLOYEES WITH THE VIEW TO ARRANGING A MEETING. "A" LEFT A COPY OF A COLLECTIVE AGREEMENT BETWEEN THE APPLICANT UNION AND ANOTHER EMPLOYER TOGETHER WITH A SPECIMEN WAGE SHEET FOR "L" TO STUDY.

4. THE ONLY MATERIAL DIFFERENCE IN THE EVIDENCE OF "L" AND "A" CONCERNING THIS FIRST VISIT WAS THAT "A" TESTIFIED THAT "L" WAS VERY ENTHUSIASTIC ABOUT THE UNION AND WOULD HAVE READILY SIGNED A MEMBERSHIP CARD HAD HE BEEN ASKED TO DO SO. HOWEVER, FOR REASONS NOT EXPLAINED, "A" STATED THAT HE DID NOT ASK "L" TO SIGN A CARD AT THAT TIME. "A" WAS IN FAVOUR OF HAVING A MEETING, AS "L" SUGGESTED, AND DID NOT ATTEMPT TO CONTACT ANY OTHER EMPLOYEES OF THE RESPONDENT UNTIL AFTER HIS SECOND VISIT WITH "L". TWO DAYS LATER "A" REATTENDED AT "L'S" HOME AT WHICH TIME "L" ADVISED "A" THAT HE WAS NOT INTERESTED IN JOINING THE UNION. "A" THEN INQUIRED IF "L" HAD ASKED OTHER EMPLOYEES TO ATTEND A MEETING AS HE HAD PROMISED TO DO. "L" REPLIED THAT HE HAD, HOWEVER HE INFORMED "A" THAT THE OTHER EMPLOYEES WERE NOT INTERESTED IN THE UNION. "A" TESTIFIED THAT HE AGAIN ASKED "L" IF HE WOULD SIGN A MEMBERSHIP CARD AND "L" ONCE MORE REFUSED. "A" STATED THAT HE THEN "GOT UP AND SAID IT'S NICE KNOWING YOU AND LEFT". "A" TESTIFIED THAT HE DID NOT ASK "L" WHY HE WAS NOT INTERESTED IN THE UNION OR WHY HE HAD CHANGED HIS MIND.

5. "L'S" TESTIMONY CONCERNING THIS SECOND VISIT IS SUBSTANTIALLY DIFFERENT FROM "A'S" VERSION. "L" TESTIFIED THAT WHEN "A" RETURNED THE SECOND TIME "L" POINTED OUT THAT HIS PRESENT WAGES WERE GREATER THAN THE WAGES PAID TO HIS OCCUPATIONAL CLASSIFICATION UNDER THE COLLECTIVE AGREEMENT THAT "A" HAD LEFT FOR HIM TO STUDY. "L" FURTHER TESTIFIED THAT OTHER EMPLOYEES WOULD NOT ATTEND A MEETING AND THAT HE WOULD NOT SIGN A CARD WITHOUT A MEETING TO FIND OUT ALL THE FACTS CONCERNING THE UNION AND THE VIEWS OF THE OTHER EMPLOYEES. UPON BEING ADVISED THAT "L" WOULD NOT JOIN AND THAT "L" HAD NOT ARRANGED THE MEETING AS PROMISED, "L" TESTIFIED THAT "A" STATED THAT "NO MATTER IF YOU JOIN OR DON'T JOIN, THE UNION HAS A MAJORITY ANYWAY". "A" FURTHER INFORMED "L" THAT AFTER THE UNION WAS CERTIFIED THEY WOULD SET UP A FEW UNION STEWARDS AND "L" WOULD BE THE FIRST MAN FIRED.

6. "A" DENIED MAKING THIS THREAT TO "L". WHILE "A" STATED IN HIS EXAMINATION-IN-CHIEF THAT "L" TOLD HIM THAT THE EMPLOYEES THAT "L" SPOKE TO WERE NOT INTERESTED IN JOINING THE UNION, HOWEVER IN CROSS-EXAMINATION "A" TESTIFIED THAT "L" DID NOT TELL HIM THAT THE OTHER EMPLOYEES WERE NOT INTERESTED IN JOINING THE UNION.

HIS TESTIMONY ON THIS POINT CONFLICTS WITH HIS EARLIER TESTIMONY. IT APPEARED FROM THE EVIDENCE THAT "A" SIGNED UP 7 OF THE APPLICANT'S 23 MEMBERS IN THIS MATTER.

7. THE BOARD IN THIS CASE MUST ASSESS THE CREDIBILITY OF "L" AND "A" TO DETERMINE WHETHER "L" HAS ESTABLISHED THE ONUS ON HIM OF PROVING THAT THE APPLICANT ENGAGED IN THREATS AND COERCION IN ITS MEMBERSHIP CAMPAIGN. WHILE THE QUESTION OF CREDIBILITY IS RARELY EASY TO RESOLVE, THAT FACT DOES NOT RELIEVE THE BOARD OF ITS RESPONSIBILITY TO DECIDE THE ISSUE OF CREDIBILITY IN THIS CASE. THERE WAS LITTLE TO CHOOSE BETWEEN "L" AND "A" CONCERNING THEIR DEMEANOUR IN THE WITNESS BOX AND THE MANNER IN WHICH THEY TESTIFIED. THE QUESTION OF CREDIBILITY IN THIS MATTER MUST THEREFORE BE RESOLVED BY ASSESSING THE CONTENT OF THE TESTIMONY OF THE TWO WITNESSES AND BY ASCERTAINING WHETHER THERE WAS ANY CONFLICT IN THEIR TESTIMONY. ANOTHER FACTOR THAT IS OF ASSISTANCE IN ASSESSING CREDIBILITY IS WHETHER THE VERSION OF THE EVENTS IN QUESTION AS TOLD BY EACH WITNESS IS LOGICAL AND REASONABLE HAVING REGARD TO ALL THE CIRCUMSTANCES.

8. ON THE ONE HAND, IT IS READILY APPARENT FROM THE TESTIMONY OF BOTH WITNESSES THAT "A" WOULD BE VERY DISAPPOINTED WITH THE RESULT OF "L'S" EFFORTS TO ARRANGE THE PROPOSED MEETING AND WITH HIS REFUSAL TO JOIN THE UNION. ON THE BASIS OF "A'S" TESTIMONY, "A" WAS CONVINCED THAT "L" WAS SOLD ON JOINING THE UNION. IN ADDITION, "A" ADMITTED TO BEING "ANNOYED" BY THE FACT THAT "L" APPEARED TO BE MORE INTERESTED IN THE TV THAN HE WAS IN "A" DURING THE SECOND DISCUSSION. IN THESE CIRCUMSTANCES, WE FIND THAT WE CANNOT ACCEPT "A'S" VERSION OF THE EVENTS WHERE HE STATES THAT HE SIMPLY SAID "IT HAS BEEN NICE KNOWING YOU AND LEFT". ONE WOULD REASONABLY ANTICIPATE THAT A NORMAL PERSON IN "A'S" POSITION WOULD AT LEAST ASK WHY "L" HAD DECIDED AGAINST THE UNION ESPECIALLY IF WE ACCEPT "A'S" TESTIMONY THAT "L" HAD BEEN VERY ENTHUSIASTIC ABOUT THE UNION DURING THEIR FIRST DISCUSSION. A REASONABLE PERSON IN "A'S" POSITION WOULD BE EXPECTED TO ASK WHY "L" HAD CHANGED HIS MIND, IF WE ACCEPT THE FACT THAT HE WAS IN SUPPORT OF THE UNION AT THE FIRST MEETING. IT DOES NOT APPEAR TO US THAT IT WOULD BE CONSISTENT WITH THE BEHAVIOUR OF A REASONABLE PERSON THAT "A" SHOULD LEAVE THE SECOND MEETING, IN THE CIRCUMSTANCES OF THIS CASE, WITHOUT COMMENT, DISCUSSION OR FURTHER ATTEMPT TO REGAIN "L'S" SUPPORT. ON THE OTHER HAND, SINCE "A" HAD BEEN BUILT UP BY "L'S" REACTION TO HIS PROPOSALS AT THE FIRST MEETING, IT WOULD NOT BE UNREASONABLE TO EXPECT THAT "A" WOULD BE DISAPPOINTED AND ANGERED BY THE FACT THAT "L" HAD APPARENTLY REVERSED HIMSELF AT THE SECOND MEETING. INDEED, "A" ADMITTED THAT HE WAS ANNOYED AT "L'S" ATTITUDE. IN THIS FRAME OF MIND IT IS MORE CONSISTENT THAT "A'S" DISAPPOINTMENT AND ANNOYANCE WOULD BE VOCALIZED BY A THREAT THAN TO REACT IN THE MANNER STATED BY "A".

9. BY CONTRAST, "L's" TESTIMONY CONCERNING HIS DISCUSSIONS WITH "A" APPEARED REASONABLE AND LOGICAL. HE TESTIFIED THAT HE LISTENED TO "A" AT THEIR FIRST MEETING. HOWEVER, HE REMAINED UNCOMMITTED AND REFUSED TO SIGN A MEMBERSHIP CARD UNTIL THE SUBJECT OF UNIONIZATION WAS FULLY CANVASSED AT A MEETING OF EMPLOYEES HELD FOR THAT PURPOSE. HAVING STUDIED THE COPY OF THE COLLECTIVE AGREEMENT WHICH "A" HAD LEFT WITH HIM, "L" DISCOVERED THAT THE WAGES CONTAINED IN THE COLLECTIVE AGREEMENT WERE LESS THAN HE PRESENTLY RECEIVED. IT WOULD NOT BE UNREASONABLE FOR A PERSON IN "L's" POSITION TO DECIDE THAT THE UNION DIDNOT HAVE SUFFICIENT TO OFFER HIM TO CAUSE HIM TO JOIN IN THESE CIRCUMSTANCES. "L's" TESTIMONY AS TO THE MANNER IN WHICH "A" REACTED ON THE SECOND VISIT COULD NOT HAVE BEEN A SIMPLE MISUNDERSTANDING OF WHAT "A" SAID. EITHER "A" MADE THE THREAT OR "L" HAS DELIBERATELY FABRICATED A LIE.

10. AS STATED EARLIER, WE ARE OF OPINION THAT "L's" TESTIMONY WAS REASONABLE, LOGICAL AND UNCONTRADICTORY. "A's" TESTIMONY, ON THE OTHER HAND, WAS BOTH CONTRADICTORY AND UNREASONABLE IN THE CIRCUMSTANCES. WE THEREFORE ARE NOT PREPARED TO ACCEPT "A's" DENIAL THAT HE THREATENED "L" AS ALLEGED. WE THEREFORE FIND THAT THE APPLICANT, THROUGH ONE OF ITS AUTHORIZED VOLUNTEER ORGANIZERS, ENGAGED IN THREATS AND COERCION IN ITS ORGANIZING CAMAIGN. IN THESE CIRCUMSTANCES AND FOR THE REASONS GIVEN BY THE BOARD IN THE MILNET MINES LIMITED CASE (1953) CCH CANADIAN LABOUR LAW REPORTER, ¶17,063; C.L.S. 76-407, AND THE CANADIAN FABRICATED PRODUCTS LIMITED, (STRATFORD) CASE, 54 CLLC ¶17,090, THE BOARD IS UNABLE TO ACCEPT AS SATISFACTORY PROOF OF MEMBERSHIP ANY OF THE DOCUMENTARY EVIDENCE FILED BY THE APPLICANT IN THIS CASE.

11. THIS APPLICATION IS THEREFORE DISMISSED.

15141-68-R: GENERAL TRUCK DRIVERS UNION LOCAL 879 (APPLICANT) V. MOBILE CARTAGE AND DISTRIBUTORS LIMITED (RESPONDENT).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS P. J. O'KEEFFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: T. E. ARMSTRONG, R. TAGGART FOR THE APPLICANT, E. L. STRINGER, D. JOHNSON FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 26, 1968.

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3. THE RESPONDENT SUBMITTED THAT ON THE DATE THE APPLICATION WAS MADE THERE WAS ONLY ONE EMPLOYEE INCLUDED WITHIN THE SCOPE OF THE BARGAINING UNIT AS THE OTHER EMPLOYEES WERE THEN DISCHARGED AS A RESULT OF THEIR PARTICIPATION IN AN UNLAWFUL STRIKE ON SEPTEMBER 23RD AND 24TH, 1968. ACCORDINGLY, THE RESPONDENT FILED THE REQUIRED SCHEDULES WITH THE BOARD SHOWING ONE NAME ON SCHEDULE A AND 12 NAMES ON SCHEDULE D. THE RESPONDENT FURTHER SUBMITTED THAT THE APPLICATION WAS UNTIMELY IN VIEW OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND MOBILE EMPLOYEES UNION EFFECTIVE UNTIL DECEMBER 21ST, 1968.

4. IN THE RESULT OF THIS MATTER THE BOARD NEED ONLY DEAL WITH THE FIRST CONTENTION OF THE RESPONDENT. THERE IS NO DISPUTE THAT ON SEPTEMBER 23RD, 1968, FOLLOWING A DISCUSSION BETWEEN THE EMPLOYEES AND THE PRESIDENT OF THE RESPONDENT, THE EMPLOYEES WHOSE NAMES APPEAR ON SCHEDULE D LEFT THE RESPONDENT'S PREMISES AT ABOUT 11:00 A.M. THEY DID NOT DO ANY FURTHER WORK FOR THE RESPONDENT AFTER THAT TIME ON THAT DAY. AT 4:00 P.M. THAT DAY, THE PRESIDENT OF THE RESPONDENT GAVE TO EACH OF SUCH EMPLOYEES A LETTER STATING THAT UNLESS THEY RETURNED TO WORK BY 8:00 A.M. THE FOLLOWING DAY, THEY WOULD BE DISMISSED. ALTHOUGH THESE EMPLOYEES WERE AT THE RESPONDENT'S PREMISES ON THE MORNING OF SEPTEMBER 24TH ON A PICKET LINE, THEY DID NOT REPORT FOR WORK OR DO ANY WORK FOR THE RESPONDENT THAT DAY AND WERE DISCHARGED BY THE RESPONDENT. THE APPLICATION WAS MADE ON SEPTEMBER 24TH, 1968.

5. THERE IS NO DOUBT THAT THOSE PERSONS SHOWN ON SCHEDULE D FILED IN THIS APPLICATION, WHILE WORKING FOR THE RESPONDENT WITHIN A MONTH IMMEDIATELY PRECEDING THE DATE OF THE APPLICATION, WERE NOT AT WORK ON SEPTEMBER 24TH, 1968, NOR WITHIN A MONTH THEREAFTER. IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE IN DETERMINING WHETHER PERSONS SHOWN ON SCHEDULE D ARE EMPLOYEES FOR THE PURPOSES OF DETERMINING THE NUMBER OF PERSONS IN THE BARGAINING UNIT, BOTH CONDITIONS MUST PREVAIL. SEE THE AMPLIFONE CANADA LTD. CASE, O.L.R.B. MONTHLY REPORT, DECEMBER 1967, PAGE 840, AT PAGE 843. IN THE CIRCUMSTANCES OF THIS CASE, WHETHER OR NOT THE PERSONS SHOWN ON SCHEDULE D ARE EMPLOYEES OF THE RESPONDENT ON THE DATE OF THE APPLICATION, IN OUR OPINION, HAS NO EFFECT ON THE RESULT. ON THE DATE OF THE APPLICATION THEY WERE NOT AT WORK NOR DID THEY PERFORM ANY WORK FOR THE RESPONDENT WITHIN A MONTH THEREAFTER. ON THIS BASIS ALONE, THEREFORE, IN ACCORDANCE WITH THE BOARD'S CONSISTENT PRACTICE, WE MUST FIND THAT THEY ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AT THE TIME FIXED FOR SUCH A DETERMINATION.

6. WE FURTHER FIND, THEREFORE, THAT AS OF THE DATE OF THE APPLICATION THERE WAS ONLY ONE EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE ACT, THIS APPLICATION IS ACCORDINGLY DISMISSED.

15142-68-R: INTERNATIONAL CHEMICAL WORKERS'S UNION (APPLICANT) V.
UNION GAS COMPANY OF CANADA, LIMITED (RESPONDENT).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS
P. J. O'KEEFE AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: TED WOHL, KEN ROGERS FOR THE APPLICANT,
AND WARREN K. WINKLER, G. WONNACOTT, W. B. BYERS AND F. PROVO FOR
THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 12, 1968.

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2. THE BOARD FURTHER FINDS THAT ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, HOME SERVICE ADVISOR, HOME ECONOMISTS, SALES REPRESENTATIVES, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

3. FOR THE PURPOSES OF CLARITY THE BOARD NOTES THAT THE FOLLOWING PERSONS ARE EMPLOYED IN A CONFIDENTIAL CAPACITY IN MATTERS RELATING TO LABOUR RELATIONS AND ARE NOT INCLUDED IN THE BARGAINING UNIT: SECRETARY TO THE MANAGER OF CUSTOMER SERVICES, WHO IS PRESENTLY CHERYL BLACK, THE SECRETARY TO THE MANAGER OF PLANT SERVICES, WHO IS PRESENTLY MYRNA AUTHIER, THE SECRETARY TO THE MANAGER OF CENTRAL REGION, WHO IS PRESENTLY ISABEL CLARK, THE SECRETARY TO THE SALES MANAGER, WHO IS PRESENTLY PHYLIS WALZAK, THE SECRETARY TO THE PERSONNEL ADVISOR, WHO IS PRESENTLY MILDRED WOODWARD. THE BOARD FURTHER NOTES THE AGREEMENT OF THE PARTIES THAT THOSE TECHNICAL EMPLOYEES WHO WORK AT THE RESPONDENT'S HEAD OFFICE AT CHATHAM AND WHO ARE CORROSION TECHNICIANS AND GAS TECHNICIANS ARE NOT INCLUDED IN THE BARGAINING UNIT.

4. THE BOARD HAS INVESTIGATED THE RELATIONSHIP BETWEEN THE PARTIES AND IT APPEARS FROM THE CERTIFICATION HISTORY, WHICH INCLUDES RECENT CERTIFICATION APPLICATIONS, THAT CASUAL EMPLOYEES HAVE BEEN EXCLUDED FROM OFFICE BARGAINING UNITS ON THE AGREEMENT OF THE PARTIES. IN ADDITION, A PERUSAL OF COLLECTIVE AGREEMENTS BETWEEN THESE TWO PARTIES INDICATES THAT CASUAL EMPLOYEES HAVE BEEN DEFINED AND EXCLUDED FROM THE OFFICE BARGAINING UNITS. IN THE CIRCUMSTANCES, AND FOR THE PURPOSES OF CLARITY, THE BOARD ACCEDES TO THE AGREEMENT OF THE PARTIES THAT CASUAL EMPLOYEES BE EXCLUDED FROM THE BARGAINING UNIT.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 2ND, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION, AND THE DATE WHICH THE

BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15164-68-R: HOTEL & RESTAURANT EMPLOYEES & BARTENDERS INTERNATIONAL UNION, LOCAL 756, AFL, CIO, CLC, ST CATHARINES, ONTARIO (APPLICANT)
V. DEZI BUCOVICKS, 259 ST PAUL ST, ST CATHARINES ONT. (RESPONDENT)
V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O. B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: RICHARD RYDER FOR THE APPLICANT; DEZSO BUCKOVICS SR., HOWARD KAMIN FOR THE RESPONDENT AND URSULA WYGODA FOR THE GROUP OF EMPLOYEES.

DECISION OF THE BOARD: NOVEMBER 7, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. AT THE HEARING OF THE CERTIFICATION APPLICATION, THE BOARD WAS PRESENTED WITH A DOCUMENT ALLEGING THAT ONE URSULA WYGODA DID NOT PAY \$1.00 TO THE UNION REPRESENTATIVE BUT WAS GIVEN A RECEIPT. AN EXAMINATION OF THE MEMBERSHIP CARD ON FILE WITH THE BOARD INDICATED THAT AN INITIATION FEE FOR MEMBERSHIP WAS PAID BY URSULA WYGODA AND WAS RECEIVED BY THE APPLICANT. IN VIEW OF THE SERIOUSNESS OF THE ALLEGATION AND THE TIME IT WAS PRESENTED, THE APPLICANT WAS ADVISED OF ITS RIGHT TO AN ADJOURNMENT TO CONSIDER THE MATTER, AND HAVE THE BOARD CONDUCT ITS USUAL INQUIRY. THE APPLICANT ADVISED THE BOARD THAT IT WAS CONTENT TO HAVE THE BOARD CONDUCT AN INQUIRY INTO THE ALLEGATIONS BY HEARING VIVA VOCE EVIDENCE WITHOUT ADJOURNING.

3. THE BOARD THEN HEARD EVIDENCE FROM URSULA WYGODA AS TO THE CIRCUMSTANCES SURROUNDING HER APPLICATION FOR MEMBERSHIP IN THE APPLICANT. SUFFICE IT TO SAY MRS. WYGODA SAID "HE [THE UNION BUSINESS AGENT] GAVE ME A RECEIPT FOR \$1.00 AND SAID, YOU DON'T HAVE TO PAY NOW THE UNION IS PAYING FOR YOU".

4. THE APPLICANT WAS THEN ADVISED OF ITS RIGHT TO CROSS EXAMINE MRS. U. WYGODA WHICH THE APPLICANT DECLINED. THE APPLICANT WAS THEN ADVISED OF ITS RIGHT TO CALL A DEFENCE WHICH THE APPLICANT DECLINED.

5. THE BOARD FINDS ON THE UNCONTRADICTED EVIDENCE OF THE WITNESS, URSULA WYGODA THAT SHE DID NOT PAY THE \$1.00 AND THAT THE PERSON PURPORTING TO COLLECTIVE THE \$1.00 WAS THE BUSINESS AGENT WHO IS A RESPONSIBLE UNION OFFICIAL.

6. THE BOARD REQUIRES THAT IN CERTIFICATION PROCEEDINGS THE APPLICATION FOR MEMBERSHIP IN A TRADE UNION BE SUPPORTED BY EVIDENCE THAT THE EMPLOYEE SAID TO BE A MEMBER OF THE APPLICANT HAS PAID TO THE APPLICANT ON HIS OWN BEHALF, AN AMOUNT OF AT LEAST \$1.00 IN RESPECT OF THE PRESCRIBED INITIATION FEE OR MONTHLY DUES OF THE APPLICANT. SEE O.L.R.B. STATEMENT OF POLICY, 1951 C.C.H., L.L.R. ¶60, 981.

7. FAILURE TO COMPLY WITH THE BOARD'S STANDARDS RESPECTING MEMBERSHIP WILL RESULT IN DEFECTIVE CARDS BEING DISCOUNTED ON THE APPLICATION AND WILL USUALLY BE DISMISSED EVEN WHERE A SINGLE CARD IS DEFECTIVE IF THAT CARD IS SUBMITTED WITH THE KNOWLEDGE OF A RESPONSIBLE UNION OFFICIAL. SEE CANADIAN METAL WORKERS UNION DIVISION 108 - NATIONAL COUNCIL OF CANADIAN LABOUR V. WEBSTER AIR EQUIPMENT COMPANY LIMITED V. UNITED STEELWORKERS OF AMERICA, (1958) C.C.H., L.L.R., TRANSFER BINDER '55-59, ¶16,110, C.L.S. 76-598, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS A.F. OF L. LOCAL 1855 V. R.C.A. VICTOR COMPANY LIMITED (1956) C.C.H., L.L.R., TRANSFER BINDER '55-'59, ¶16,045, C.L.S. 76-515. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION A.F.L. C.I.O. C.L.C. V. DOMINION STORES LIMITED, 1964, DECEMBER, MONTHLY REP. O.L.R.B. P. 447. THE BOARD SEES NO REASON TO DEPART FROM ITS USUAL PRACTICE IN THE INSTANT CASE.

8. THE BOARD FURTHER FINDS THAT THE BUSINESS AGENT WHO PURPORTED TO COLLECT THE \$1.00, SUBMITTED THE MEMBERSHIP CARDS AND ALSO SIGNED THE DECLARATION CONCERNING MEMBERSHIP DOVUMENTS (FORM 8). THAT DECLARATION PROVIDES INTER ALIA:

"...THAT EACH MEMBER ON WHOSE BEHALF A RECEIPT OF ACKNOWLEDGEMENT OF PAYMENT IS SUBMITTED HAS PERSONALLY PAID IN MONEY THE AMOUNT SHOWN THEREON ON HIS OWN HEHALF TO THE PERSON WHOSE NAME APPEARS ON HIS RECEIPT OR ACKNOWLEDGEMENT OF PAYMENT AS COLLECTOR...."

9. IN VIEW OF THE FINDING THAT URSULA WYGODA DID NOT PAY THE \$1.00 AND THAT A RECEIPT WAS SUBMITTED TO THE BOARD INDICATING THAT \$1.00 HAD IN FACT BEEN PAID, THE BOARD FINDS THAT THE DECLARATION CONCERNING MEMBERSHIP DOCUMENTS IS UNRELIABLE, WHICH IS SUFFICIENT BY ITSELF TO RESULT IN THE APPLICATION BEING DISMISSED. SEE INTERNATIONAL STEELWORKERS OF AMERICA V. NATIONAL STEEL CAR CORPORATION LIMITED, 1966, JANUARY, MONTHLY REP. O.L.R.B. P. 738.

10. AS A RESULT OF THE BOARD'S FINDING WITH RESPECT TO THE MEMBERSHIP EVIDENCE, IT IS NOT NECESSARY TO MAKE ANY FINDINGS WITH RESPECT TO THE OTHER ISSUES RAISED AT THE HEARING.

11. ON OCTOBER 24TH, 1968, SUBSEQUENT TO THE HEARING, A LETTER WITH ENCLOSURES, WAS RECEIVED FROM THE APPLICANT REQUESTING THE BOARD RE-OPEN THE HEARING.

12. AT THE HEARING OF THIS APPLICATION, THE APPLICANT WAS ADVISED OF ITS RIGHT TO AN ADJOURNMENT WITH RESPECT TO THE MATTERS RAISED WHICH INCLUDED BOTH THE ISSUE OF NON-PAYMENT OF THE DUES OR INITIATION FEES AND THE ISSUE RESPECTING THE STATEMENT OF OBJECTIONS FILED BY THE EMPLOYEES. THE APPLICANT CONSENTED TO DEAL WITH BOTH ISSUES AT THE HEARING. THE APPLICANT THEREFORE HAD THE OPPORTUNITY TO DEAL WITH THE ISSUES RAISED, AT THE HEARING, OR TO OBTAIN AN ADJOURNMENT IF IT FELT IT WERE BEING PREJUDICED. THE BOARD HAS ALSO CONSIDERED THE SUBMISSIONS RAISED BY THE APPLICANT IN ITS LETTER OF OCTOBER 24TH, 1968. HAVING REGARD TO THE CIRCUMSTANCES HEREIN, THE SUBMISSIONS OF THE APPLICANT AND ALSO FOR THE REASONS CONTAINED IN UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL, CIO-CLC AND FLECK MANUFACTURING LIMITED, 1962 CLLC 1046, THE BOARD DENIES THE APPLICANT'S REQUEST TO RE-OPEN THE HEARING.

13. THE APPLICATION IS THEREFORE DISMISSED.

15171-68-R: INTERNATIONAL BROTHERHOOD OF PULP SULPHITE AND PAPER MILL WORKERS (APPLICANT) v. REXWOOD PRODUCTS LIMITED (RESPONDENT) GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J. E. C. ROBINSON.

APPEARANCES AT THE HEARING: JOHN OSLER, Q.C., NORMAN A. PAXTON AND DON HOLDER FOR THE APPLICANT, B. W. BINNING, J. CORLEY MARTIN AND DUNCAN R. YOUNG FOR THE RESPONDENT, MURRAY N. ELLIES FOR THE OBJECTORS.

DECISION OF J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES:
NOVEMBER 21, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH BOTH THE APPLICANT AND THE RESPONDENT PROPOSED THAT THE BARGAINING UNIT IN THIS MATTER BE DESCRIBED AS "ALL EMPLOYEES OF THE COMPANY IN THE TOWNSHIP OF BUCKE SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMEN, OFFICE AND SALES STAFF".

2. AT THE HEARING IN THIS MATTER, WHEN THE BOARD ASKED THE PARTIES WHETHER THEY HAD ANY REPRESENTATIONS TO MAKE CONCERNING THE DESCRIPTION OF THE BARGAINING UNIT, COUNSEL FOR THE APPLICANT ADVISED THE BOARD THAT WHILE BOTH THE APPLICANT AND THE RESPONDENT PROPOSED THAT THE BARGAINING UNIT BE DESCRIBED IN IDENTICAL TERMS, APPARENTLY THE PARTIES WERE NOT TALKING ABOUT THE SAME NUMBER OF PERSONS. THE APPLICANT TOOK THE POSITION THAT THERE WERE APPROXIMATELY 106 PERSONS INCLUDED IN THE UNIT DESCRIBED BY IT, HOWEVER THE RESPONDENT CLAIMED THAT THERE WERE 122 PERSONS INCLUDED IN ITS PROPOSED BARGAINING UNIT. IN VIEW OF THIS NUMERICAL DISCREPANCY, THE APPLICANT ASKED CERTAIN QUESTIONS IN AN ATTEMPT TO CLARIFY THE DIFFERENCE BETWEEN THE PARTIES.

3. AT THIS POINT, THE BOARD ADVISED THE PARTIES THAT THE LIST OF EMPLOYEES FILED BY THE RESPONDENT WAS PREPARED IN SUCH A MANNER THAT IT MIGHT TEND TO EXPLAIN THE REASON FOR THE DISCREPANCY BETWEEN THE PARTIES. THE FIRST 110 NAMES ON SCHEDULE "A" FILED BY THE RESPONDENT WERE LISTED IN ALPHABETICAL ORDER WITH THE OCCUPATIONAL CLASSIFICATIONS OPPOSITE EACH NAME. HOWEVER, THE LAST 12 NAMES ON SCHEDULE "A" WERE SEPARATED FROM THE OTHERS AND APPEARED UNDER THE SUB-HEADING "TRANSPORT PAYROLL". EACH PERSON UNDER THIS SUB-HEADING HAD THE SAME CLASSIFICATION OF "DRIVER-TRANSPORT". NO DRIVERS WERE LISTED AMONG THE FIRST 110 NAMES.

4. WHEN THE APPLICANT WAS ADVISED THE NAMES OF DRIVERS APPEARED ON THE RESPONDENT'S LIST OF EMPLOYEES, THE APPLICANT CHALLENGED THEIR INCLUSION AND ALLEGED THAT THE DRIVERS OPERATED THEIR OWN VEHICLES AND WERE INDEPENDENT CONTRACTORS RATHER THAN EMPLOYEES. THE RESPONDENT, HOWEVER, INSISTED THAT THE DRIVERS WERE EMPLOYED BY THE RESPONDENT AND ENUMERATED CERTAIN FACTS IN SUPPORT OF ITS POSITION. THE BOARD INDICATED THAT THIS ISSUE WOULD HAVE TO BE RESOLVED WITH THE ASSISTANCE OF AN EXAMINER.

5. AFTER THE APPLICANT'S MEMBERSHIP POSITION WAS ANNOUNCED AND IMMEDIATELY PRIOR TO THE ADJOURNMENT OF THE HEARING, COUNSEL FOR THE APPLICANT REQUESTED THE BOARD TO DIRECT THAT THE EXAMINER MAKE INQUIRIES INTO THE EMPLOYMENT STATUS OF THE DRIVERS AND, IN THE EVENT THAT THE BOARD WERE TO FIND THAT THE DRIVERS ARE EMPLOYEES OF THE RESPONDENT, TO DIRECT THE EXAMINER TO MAKE INQUIRIES SO THAT THE BOARD COULD DETERMINE WHETHER IT WOULD BE APPROPRIATE TO INCLUDE SUCH PERSONS IN A BARGAINING UNIT WITH OTHER EMPLOYEES OF THE RESPONDENT.

6. THE RESPONDENT TOOK ISSUE WITH THE APPLICANT'S REQUEST ON THE GROUNDS THAT THE APPLICANT'S CHALLENGE WAS ORIGINALLY CONFINED TO THE EMPLOYMENT STATUS OF THE DRIVERS; HOWEVER THE APPLICANT WAS NOW ATTEMPTING TO ENLARGE THE EXAMINER'S INQUIRY.

7. FOLLOWING THE HEARING, THE BOARD ON OCTOBER 17TH, 1968 DIRECTED THE EXAMINER "TO INQUIRE INTO AND REPORT TO THE BOARD ON THE COMPOSITION OF THE BARGAINING UNIT IN THIS MATTER AND THE EMPLOYMENT STATUS OF PERSONS CLASSIFIED BY THE RESPONDENT AS DRIVER - TRANSPORT". THE EXAMINER'S APPOINTMENT WAS COUCHED IN BROAD TERMS TO PERMIT THE EXAMINER TO OBTAIN ALL THE AVAILABLE EVIDENCE RELATING TO THE DISPUTE WITH RESPECT TO THE DRIVERS.

8. AT THE FIRST HEARING CONDUCTED BY THE EXAMINER, THE RESPONDENT OBJECTED TO ANY QUESTIONS WHICH TENDED TO DEAL WITH THE ISSUE OF COMMUNITY OF INTERESTS SHARED BY THE DRIVERS WITH OTHER EMPLOYEES. THE APPLICANT BY LETTER DATED NOVEMBER 4TH, 1968 REQUESTED THE BOARD TO CLARIFY ITS DECISION OF OCTOBER 17TH, 1968 AND RULE THAT THE EXAMINER'S APPOINTMENT TO INQUIRE INTO THE "COMPOSITION OF THE BARGAINING UNIT" IS BROAD ENOUGH TO ENCOMPASS AN INQUIRY INTO THE COMMUNITY OF INTERESTS OF THE DRIVERS.

9. THE RESPONDENT OBJECTED TO SUCH RULING FOR REASONS SET FORTH IN ITS LETTER DATED NOVEMBER 5TH, 1968. THE OBJECTORS BY LETTER DATED NOVEMBER 7TH, 1968 ALSO OPPOSED THE APPLICANT'S REQUEST.

10. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THIS IS NOT A CASE WHERE A PARTY HAS ATTEMPTED TO UNILATERALLY REPUDIATE AN AGREEMENT IT HAS MADE. WHILE THE APPLICANT AND THE RESPONDENT PROPOSED A BARGAINING UNIT IN SIMILAR TERMS IN THEIR APPLICATION AND REPLY IN THESE PROCEEDINGS, THIS FACT DOES NOT PRECLUDE EITHER PARTY FROM ALTERING THEIR POSITION AT THE HEARING. THE BOARD HAS NEVER TAKEN THE POSITION THAT WHERE TWO PARTIES HAVE PROPOSED THE SAME BARGAINING UNIT SUCH PROPOSALS TAKEN TOGETHER CONSTITUTE AN "AGREEMENT". IN EVERY CERTIFICATION HEARING, NO MATTER WHAT BARGAINING UNIT HAS BEEN DESCRIBED IN THE APPLICATION AND REPLY, THE BOARD ASKS THE PARTIES WHETHER THEY HAVE ANY REPRESENTATIONS TO MAKE WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT. PARTIES MAY, AND OFTEN DO, SEEK AMENDMENTS TO THE BARGAINING UNIT BY EITHER ABANDONING THEIR REQUEST FOR CERTAIN EXCLUSIONS OR ADDING ADDITIONAL EXCLUSIONS OR BY COMPLETELY CHANGING THE MANNER OF DESCRIBING THE EMPLOYEES CONCERNED. WHILE THE BOARD ENTERTAINS THE REPRESENTATIONS AND EVIDENCE OF THE PARTIES WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT, THE RESPONSIBILITY OF DETERMINING THE UNIT OF EMPLOYEES THAT IS APPROPRIATE FOR COLLECTIVE BARGAINING RESTS WITH THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 6 OF THE ACT. (SEE ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1968, P. 1183.)

11. IN THE INSTANT CASE, IT WAS READILY APPARENT FROM THE OUTSET THAT THE APPLICANT HAD A CHALLENGE TO MAKE CONCERNING THE BARGAINING UNIT EVEN THOUGH THAT CHALLENGE COULD NOT BE ARTICULATED BECAUSE THE APPLICANT WAS NOT AWARE THAT THE RESPONDENT CLAIMED THAT THE DRIVERS WERE EMPLOYEES. ONCE IT BECAME CLEAR THAT THE RESPONDENT TOOK THE POSITION THAT THE DRIVERS WERE EMPLOYEES THE APPLICANT IMMEDIATELY CHALLENGED THEIR INCLUSION ON THE GROUNDS THAT THEY WERE INDEPENDENT CONTRACTORS RATHER THAN EMPLOYEES. ONCE HAVING CHALLENGED THE APPROPRIATENESS OF INCLUDING DRIVERS IN THE BARGAINING UNIT ON THE GROUNDS THAT THEY WERE INDEPENDENT CONTRACTORS, WE FIND THAT THE APPLICANT IS ENTITLED TO TAKE THE POSITION THAT IF THE EVIDENCE FAILED TO ESTABLISH THAT THE DRIVERS WERE INDEPENDENT CONTRACTORS, THE APPLICANT COULD THEN ARGUE THAT THEY DID NOT SHARE A COMMUNITY OF INTERESTS WITH OTHER EMPLOYEES AND THEREFORE, FOR THAT REASON, WERE NOT APPROPRIATE FOR INCLUSION IN THE BARGAINING UNIT. WHERE THE INCLUSION OF A CLASSIFICATION IN A BARGAINING UNIT HAS BEEN CHALLENGED FOR ANY REASON AND AN EXAMINER IS APPOINTED, THE CHALLENGING PARTY IS ENTITLED TO ADDUCE AND RELY ON WHATEVER EVIDENCE IS AVAILABLE TO IT IN ITS ATTEMPT TO SATISFY THE BOARD THAT THE APPROPRIATE BARGAINING UNIT WOULD NOT INCLUDE SUCH CLASSIFICATION.

12. FOR THE FOREGOING REASONS, THE BOARD DIRECTS THAT THE EXAMINER PERMIT QUESTIONS TO BE ASKED CONCERNING THE COMMUNITY OF INTERESTS SHARED BY THE DRIVERS AND OTHER EMPLOYEES OF THE RESPONDENT IN ORDER THAT THE BOARD MAY DETERMINE THE COMPOSITION OF THE APPROPRIATE BARGAINING UNIT ON THE BASIS OF ALL THE AVAILABLE EVIDENCE IN THIS CASE.

DECISION OF BOARD MEMBER J. E. C. ROBINSON:

NOVEMBER 21, 1968.

I WISH ONLY TO MAKE SEVERAL COMMENTS CONCERNING THE DECISION OF MY COLLEAGUES.

I AGREE WITH THEM WHEN THEY SAY THAT "THE BOARD ASKS THE PARTIES WHETHER THEY HAVE ANY REPRESENTATIONS TO MAKE WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT". THIS IS USUALLY DONE BEFORE THE CHAIRMAN ANNOUNCES THE NUMBER OF MEMBERS OF THE APPLICANT IN RELATION TO THE NUMBER OF EMPLOYEES IN THE BARGAINING UNIT.

MY OBJECTION IN THE INSTANT CASE WAS THAT UNTIL THAT COUNT WAS GIVEN, THE ONLY POSITION FORWARDED BY THE APPLICANT WAS THAT THE DRIVERS WERE INDEPENDENT CONTRACTORS. AFTER THE COUNT WAS GIVEN, AND AN INDICATION WAS GIVEN BY THE CHAIRMAN THAT AN EXAMINER WOULD BE APPOINTED TO DETERMINE IF SUCH DRIVERS WERE INDEPENDENT CONTRACTORS, THE APPLICANT'S COUNSEL MADE A FURTHER AND

ALTERNATIVE PROPOSAL THAT THEY SHOULD BE EXCLUDED FROM THE BARGAINING UNIT BECAUSE OF A LACK OF COMMUNITY OF INTEREST WITH THE OTHER EMPLOYEES. WHILE SUCH COURSE WAS OPEN TO THE APPLICANT, SUCH SUBMISSIONS SHOULD HAVE BEEN MADE WHEN THE CHAIRMAN ASKED IF THERE WERE ANY FURTHER REPRESENTATIONS TO BE MADE WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT.

TO SUGGEST, AS MY COLLEAGUES DO, THAT MR. OSLER, WHO APPEARED ON BEHALF OF THE APPLICANT UNION, WAS UNABLE TO ARTICULATE HIS CHALLENGE TO THE DRIVERS IS AN INJUSTICE TO HIM. IN THIS USUAL MANNER, HE WAS MOST ARTICULATE IN HIS SUBMISSION. IT WAS THAT THE DRIVERS BE EXCLUDED FROM THE BARGAINING UNIT BECAUSE THEY WERE INDEPENDENT CONTRACTORS. IT WAS ONLY AFTER THE COUNT WAS GIVEN THAT HE REQUESTED THAT HIS ADDITIONAL SUBMISSION BE CONSIDERED BY THE BOARD.

15180-68-R: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. TAYLOR INSTRUMENT COMPANIES OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: PATRICK MURPHY, W.E. RAYCROFT, GEORGE C. MILLER FOR THE APPLICANT; B.H. STEWART FOR THE RESPONDENT; RONALD GREGORY FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN O.B. SHIME AND BOARD MEMBER O. HODGES:

NOVEMBER 28, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION.
2. AT THE OUTSET OF THE HEARING, COUNSEL FOR THE RESPONDENT PLACED IN ISSUE THE RIGHT OF THE APPLICANT, ACCORDING TO ITS CONSTITUTION, TO REPRESENT THE EMPLOYEES OF THE RESPONDENT.
3. THERE WAS FILED WITH THE BOARD A COPY OF THE APPLICANT'S CONSTITUTION. THE RELEVANT PROVISIONS OF THE CONSTITUTION ARE AS FOLLOWS:

ARTICLE IV - JURISDICTION AND MEMBERSHIP

SECTION 1 - (A) ANY GROUP OF THE FOLLOWING EMPLOYEES SHALL BE ELIGIBLE FOR MEMBERSHIP AS A CHARTERED LOCAL UNION.

- (B) EMPLOYEES OF ANY FEDERAL, PROVINCIAL OR MUNICIPAL GOVERNMENT, OR LOCAL AUTHORITY OR ANY SUBDIVISION THEREOF.
- (C) EMPLOYEES OF ANY PUBLIC BOARD OR COMMISSION ESTABLISHED BY OR RELATED TO THE MUNICIPAL AUTHORITY.
- (D) EMPLOYEES OF ANY PUBLIC BOARD, COMMISSION OR AUTHORITY OF THE FEDERAL OR ANY PROVINCIAL GOVERNMENT.
- (E) EMPLOYEES OF ANY HOSPITAL, SOCIAL OR WELFARE AGENCY ESTABLISHED TO SERVE A COMMUNITY.
- (F) EMPLOYEES OF ANY PUBLIC UTILITY WHOSE CHARGES OR RATES TO THE PUBLIC COME UNDER THE SUPERVISION OF A GOVERNMENTAL BODY OR AGENCY,
- (G) THE UNION SHALL ISSUE CHARTERS TO GROUPS OTHER THAN THOSE INDICATED ABOVE, WHEN IT CONSIDERS IT IN THE BEST INTERESTS OF THE CANADIAN UNION OF GENERAL EMPLOYEES TO DO SO.
- (H) A MINIMUM OF TWELVE EMPLOYEES MUST INDICATE A DESIRE FOR MEMBERSHIP BEFORE A CHARTER MAY BE ISSUED.

SECTION 1A - "ANY PERSON ELIGIBLE FOR MEMBERSHIP IN THE UNION AND WHO DESIRE TO BECOME A MEMBER AND SUPPORT THE AIMS AND OBJECTIVES OF THIS UNION MAY DO SO BY SIGNING AN APPLICATION IN THE FORM PRESCRIBED FROM TIME TO TIME BY THE UNION GENERAL EXECUTIVE BOARD AND TENDERING AN APPLICATION FEE OF NOT LESS THAN ONE DOLLAR."

ARTICLE VII - BIENNIAL CONVENTION

SECTION 1A - "IN THE EVENT THAT THE UNION HAS NOT CHARTERED PROVINCIAL DIVISIONS, DISTRICT COUNCILS, PROVINCIAL UNIONS, LOCAL UNIONS, ALL MEMBERS OF THE UNION IN GOOD STANDING SHALL BE DELEGATES AT THE CONVENTION".

4. THE PROVISIONS OF THE CONSTITUTION ESTABLISHED THAT THE APPLICANT IS A MEMBERSHIP ORGANIZATION WHICH CLASSIFIES ITS MEMBERS INTO TWO TYPES. ARTICLE 4 SECTION 1 PARAGRAPHS A TO F INCLUSIVE DEALS WITH WHAT MAY BE DESCRIBED FOR THE PURPOSES OF THESE REASONS AS "PUBLIC EMPLOYEES". ARTICLE 4 SECTION 1(G) DEALS WITH PERSONS "OTHER THAN PUBLIC EMPLOYEES".

5. THE RESPONDENT SUBMITS THAT IT IS A PRIVATE COMPANY WHICH EMPLOYS OTHER THAN PUBLIC EMPLOYEES, AND BEFORE THE APPLICANT CAN ADMIT THESE EMPLOYEES INTO MEMBERSHIP AND REPRESENT THEM, THE APPLICANT MUST FIRST ISSUE A CHARTER TO THESE EMPLOYEES OR TO PUT IT ANOTHER WAY, THAT THE ISSUING OF A CHARTER IS A CONDITION PRECEDENT TO ADMISSION INTO MEMBERSHIP OF THE RESPONDENT'S EMPLOYEES. IT IS AGREED THAT NO CHARTER HAS BEEN ISSUED.

6. WHERE A UNION CONSTITUTION PURPORTS TO EXCLUDE FROM MEMBERSHIP EMPLOYEES IN THE PROPOSED BARGAINING UNIT THE BOARD WILL DISMISS AN APPLICATION FOR CERTIFICATION. SEE INTERNATIONAL UNION OF OPERATING ENGINEERS V. CANADIAN CANNERS LIMITED PLANT No. 1, 1965 MAY MONTHLY REPORT, O.L.R.B. P. 125. HOWEVER, IN THIS CASE THE UNION CONSTITUTION DOES NOT EXCLUDE FROM MEMBERSHIP EMPLOYEES IN THE PROPOSED BARGAINING UNIT AND THE BOARD FINDS THAT THE APPLICANT IS CAPABLE OF ADMITTING THE RESPONDENT'S EMPLOYEES INTO MEMBERSHIP.

7. THE BOARD FURTHER FINDS THAT THE CONSTITUTION CONTEMPLATES MEMBERSHIP WHERE NO CHARTERS HAVE BEEN ISSUED. SEE ARTICLE VII SECTION 1(A). NOTWITHSTANDING THAT ARTICLE IV SECTION 1(G) SUGGESTS A MANDATORY ISSUANCE OF A CHARTER THE BOARD FINDS THAT THE SECTION IS A DISCRETIONARY ONE AND THAT THE UNION NEED NOT ISSUE CHARTERS TO GROUPS OF EMPLOYEES WHO ARE "OTHER THAN PUBLIC EMPLOYEES". THE BOARD THEREFORE FINDS THAT THE ISSUING OF A CHARTER IS NOT A CONDITION PRECEDENT TO MEMBERSHIP AND THAT THE RESPONDENT'S EMPLOYEES HAVE PROPERLY BEEN ADMITTED INTO MEMBERSHIP BY THE APPLICANT. THE RESPONDENT'S MOTION IS THEREFORE DISMISSED.

8. MR. J.E. LEONARD, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF:

(A) THE INSPECTORS;

(B) E. CRACKNELL, J.M. TUTTON, R. HIRONS;

(C) TECHNICAL STAFF.

DECISION OF BOARD MEMBER J.E.C. ROBINSON:

NOVEMBER 28, 1968.

I DISSENT. I WOULD FIND THAT ON MY INTERPRETATION OF THE LANGUAGE OF THE CONSTITUTION, THE EMPLOYEES IN THE BARGAINING UNIT OF THE RESPONDENT COULD NOT BECOME MEMBERS OF THE APPLICANT UNION. I WOULD, THEREFORE, HAVE DISMISSED THE APPLICATION.

15219-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. SARNIA CONCRETE PRODUCTS LTD. (RESPONDENT) V. LABOURERS INTERNATIONAL UNION OF NORTH AMERICA - LOCAL 1089 (INTERVENER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: E. VANDERKLOET FOR THE APPLICANT, NO ONE FOR THE RESPONDENT, R. D'ANDREA FOR THE INTERVENER.

DECISION OF THE BOARD: NOVEMBER 18, 1968.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF.

3. THE INTERVENER SUBMITS THAT THE APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE RESPONDENT IS A PARTY TO A CURRENT COLLECTIVE AGREEMENT WITH A COUNCIL OF TRADE UNIONS ACTING ON BEHALF OF THE SARNIA LOCALS OF THE OPERATING ENGINEERS, THE TEAMSTERS, THE CARPENTERS AND THE LABOURERS.

4. THERE WAS FILED WITH THE BOARD A COLLECTIVE AGREEMENT DATED APRIL 18TH, 1966. THE NAMED PARTIES TO THE AGREEMENT ARE SARNIA CONCRETE PRODUCTS LTD. AND A COUNCIL OF TRADE UNIONS ACTING ON BEHALF OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; TEAMSTERS' LOCAL UNION No. 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA; INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 1089; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1256. THE COLLECTIVE AGREEMENT BEARS THE SIGNATURE OF J. BOTMA. BELOW HIS SIGNATURE APPEARS THE WORDS "SARNIA CONCRETE PRODUCTS", AN UNINCORPORATED ENTITY. THERE ALSO APPEARS ON THE AGREEMENT THE SIGNATURE OF R. D'ANDREA FOR THE LABOURERS, LOCAL 1089. NO SIGNATURES APPEAR ON THE AGREEMENT ON BEHALF OF THE OPERATING ENGINEERS, THE TEAMSTERS OR THE CARPENTERS. ATTACHED TO THE AGREEMENT ARE FOUR SEPARATE SCHEDULES OF CLASSIFICATIONS AND WAGE RATES, ONE FOR EACH OF THE UNIONS THAT ARE MEMBERS OF

THE COUNCIL. THE SCHEDULES ARE INCORPORATED AS PART OF THE AGREEMENT BY ARTICLE 9 TITLED "CLASSIFICATIONS - WAGE RATES". SCHEDULE "C" WHICH CONTAINS THE CLASSIFICATIONS AND WAGE RATES APPLICABLE TO MEMBERS OF LABOURERS LOCAL 1089 IS SIGNED IN THE IDENTICAL MANNER AS THE AGREEMENT ITSELF. NONE OF THE OTHER THREE SCHEDULES ARE EXECUTED.

5. BOTMA CARRIED ON BUSINESS AS AN UNINCORPORATED ENTITY KNOWN AS SARNIA CONCRETE PRODUCTS. ON APRIL 1ST, 1966 BOTMA INCORPORATED HIS BUSINESS UNDER THE NAME OF SARNIA CONCRETE PRODUCTS LTD. HAVING REGARD TO THE FACT THAT THE NAMED PARTY TO THE AGREEMENT IS SARNIA CONCRETE PRODUCTS LTD. WHICH WAS THE EXISTING EMPLOYER AT THE TIME THE AGREEMENT WAS EXECUTED AND THE FACT THAT BOTMA CLEARLY HAD THE AUTHORITY TO SIGN THE COLLECTIVE AGREEMENT ON BEHALF OF THE INCORPORATED COMPANY, THE BOARD FINDS THAT THE COLLECTIVE AGREEMENT IS BINDING ON THE NAMED RESPONDENT. WE MAKE THIS FINDING NOTWITHSTANDING THAT THE PRIOR UNINCORPORATED ENTITY SARNIA CONCRETE PRODUCTS APPEARS BELOW HIS SIGNATURE.

6. ARTICLE 2 OF THE COLLECTIVE AGREEMENT PROVIDES THAT THE SARNIA CONSTRUCTION ASSOCIATION AGREES TO RECOGNIZE THE COUNCIL OF TRADE UNIONS AS THE COLLECTIVE BARGAINING AGENT FOR ALL OF THE EMPLOYEES OF ITS MEMBER COMPANIES WHILE WORKING WITHIN THE BOUNDARIES OF LAMBTON COUNTY. THE AGREEMENT ENTERED INTO BY THE RESPONDENT IS IN IDENTICAL FORM TO THE COLLECTIVE AGREEMENT ENTERED INTO BY THE SAID COUNCIL AND THE ASSOCIATION. THE ONLY MEMBER OF THE COUNCIL, HOWEVER, WHO IS A SIGNATORY TO THE AGREEMENT ITSELF AND THE ATTACHED SCHEDULES IS THE LABOURERS LOCAL 1089. WE ACCORDINGLY FIND THAT THE AGREEMENT IS ONLY BINDING UPON THE RESPONDENT WITH RESPECT TO THE LABOURERS. IT FOLLOWS THAT DESPITE THE FACT THAT THE AGREEMENT PURPORTS TO BE BINDING ON ALL EMPLOYEES OF THE RESPONDENT IT IS ONLY BINDING UPON THOSE EMPLOYEES OF THE RESPONDENT FALLING WITHIN THE TRADE JURISDICTION OF THE LABOURERS.

7. THE DURATION CLAUSE OF THE COLLECTIVE AGREEMENT PROVIDES THAT IT IS TO REMAIN IN FORCE UNTIL APRIL 30TH, 1968 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. THE EVIDENCE IS THAT THE LABOURERS, LOCAL 1089 DID NOT GIVE NOTICE TO THE RESPONDENT WITHIN THE TIME LIMITS PRESCRIBED BY THE AGREEMENT. THE COLLECTIVE AGREEMENT ACCORDINGLY RENEWED ITSELF UNTIL APRIL 30TH, 1969.

8. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT SARNIA, SAVE AND EXCEPT FOREMEN AND PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF AND PERSONS COVERED BY A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERNATIONAL HOD CARRIERS, BUILDING AND COMMON LABOURERS' UNION OF AMERICA, LOCAL 1089, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

9. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 22ND, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15239-68-R: LOCAL UNION 804 OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (AFL-CIO-CLC) (APPLICANT) V. NORANDA COPPER MILLS LTD., FERGUS DIVISION (RESPONDENT) V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (INTERVENER).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND O. HODGES.

APPEARANCES AT THE HEARING: GEORGE PETTA, AL SCHAEFER, BARNEY BARNES FOR THE APPLICANT; A. Y. FORTIER, N. E. LANG, K. J. FALCONBRIDGE, R. J. DRMAJ FOR THE RESPONDENT; R. RUSSELL FOR THE INTERVENER.

DECISION OF THE BOARD: NOVEMBER 7, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT FERGUS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD OR ON A CO-OPERATIVE TRAINING BASIS WITH THE UNIVERSITY, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE INTERVENER SUBMITTED AT THE HEARING THAT THIS APPLICATION WAS PREMATURE IN THAT THERE WOULD BE A BUILD UP IN THE WORK FORCE OF THE RESPONDENT AT ITS PLANT WHICH IS NEW AND THEREFORE THE PRESENT GROUP OF EMPLOYEES DO NOT CONSTITUTE A REPRESENTATIVE NUMBER OF PERSONS OF THOSE TO BE EMPLOYED BY THE RESPONDENT. THE BOARD CONSIDERED THE REPRESENTATIONS OF THE PARTIES IN THIS RESPECT AND IT IS QUITE APPARENT THAT ALL OF THE CLASSIFICATIONS ARE PRESENTLY FILLED AND ALTHOUGH THE RESPONDENT DOES ANTICIPATE EMPLOYING SEVEN ADDITIONAL PERSONS WITHIN THE NEXT MONTH SUCH PERSONS WOULD OCCUPY A CLASSIFICATION ALREADY IN EXISTENCE. THE RESPONDENT FURTHER SUBMITTED THAT IT DID NOT ANTICIPATE A SCHEDULED BUILD UP OF OTHER EMPLOYEES. HAVING REGARD TO THE FOREGOING WITHOUT EVIDENCE OF AN ESTABLISHED SCHEDULE

FOR FUTURE EMPLOYMENT LEADING TO A DEFINITE TOTAL NUMBER OF EMPLOYEES IN THE BARGAINING UNIT, THE BOARD MUST CONSIDER THE REPRESENTATION AS OF THE DATE OF THE APPLICATION. WHERE, AS IN THIS CASE THE APPLICANT HAS ESTABLISHED PRACTICALLY COMPLETE SUPPORT OF THE PRESENT EMPLOYEES WHO THEMSELVES MAKE UP MORE THAN 50% OF THE EXPECTED TOTAL WE ARE SATISFIED THAT AS OF THE DATE OF THE APPLICATION THE EMPLOYEES CONSTITUTED A REPRESENTATIVE PROPORTION OF THE WORK FORCE TO BE EMPLOYED BY THE RESPONDENT. WE THEREFORE FIND THAT THIS APPLICATION IS TIMELY.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 28TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15312-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V.
PRODUCERS CONTAINER (CANADA) LTD. (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
H. F. IRWIN AND P. J. O'KEEFFE.

APPEARANCES AT HEARING: D. M. STOREY AND WM. LLOYD FOR THE APPLICANT; CHARLES J. CLARK, Q.C., J. DOUGLAS LAWSON AND A. KEITH LONG FOR THE RESPONDENT; BARRIE RUBIN, GORDON JANISSE AND MARCEL LETOURNEAU FOR THE GROUP OF EMPLOYEES.

DECISION OF VICE-CHAIRMAN, RORY F. EGAN AND BOARD MEMBER
P. J. O'KEEFFE: NOVEMBER 27, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THERE WAS FILED IN OPPOSITION TO THE APPLICATION A STATEMENT OF DESIRE OR PETITION BEARING THE NAMES OF 24 EMPLOYEES OF THE RESPONDENT. EMPLOYEES WHO HAD SIGNED CARDS OF MEMBERSHIP IN THE APPLICANT UNION ALSO SIGNED THE PETITION IN NUMBERS SUFFICIENT TO MAKE IT NECESSARY FOR THE BOARD TO MAKE ITS USUAL INQUIRY INTO THE ORIGINATION OF THE PETITION AND THE MANNER IN WHICH THE SIGNATURES THERETO WERE OBTAINED.

2. EVIDENCE WAS GIVEN ON BEHALF OF THE PETITIONERS BY GORDON JANISSE AND MARCEL LETOURNEAU. MR. KEITH LONG, PERSONNEL MANAGER, TESTIFIED ON BEHALF OF THE COMPANY. ALL THREE WITNESSES ULTIMATELY AGREED THAT AT OR ABOUT THE TIME OF THE UNION ORGANIZATIONAL CAMPAIGN,

TWO MEETINGS OF EMPLOYEES TOOK PLACE AND BEFORE FORMAL NOTICE OF APPLICATION FOR CERTIFICATION. THEY ALSO AGREED THAT SUBSEQUENT TO THE POSTING OF THE NOTICE OF APPLICATION, A FURTHER MEETING OF EMPLOYEES WAS HELD.

3. EARLY IN HIS TESTIMONY, JANISSE STATED THAT THERE HAD BEEN NO IN-PLANT MEETINGS. SUBSEQUENTLY, HE AGREED THAT THERE HAD BEEN A MEETING CALLED BY MANAGEMENT WHICH TOOK PLACE IN THE LABORATORY. MR. LONG STATED THE MEETING WAS ADDRESSED BY MR. C.A. FARROW, VICE PRESIDENT, IN CHARGE OF PRODUCTION, AND BY MR. LONG HIMSELF. FARROW ADVISED THE MEETING THAT THE COMPANY WAS AWARE OF THE UNION ACTIVITY AND THAT THE CHOICE WAS THEIRS. LONG FOLLOWED FARROW AND BY REFERENCE TO THE LABOUR RELATIONS ACT EXPLAINED TO THE EMPLOYEES HOW CERTIFICATION COULD TAKE PLACE. HE REFERRED TO THE PERCENTAGE OF MEMBERSHIP REQUIRED FOR OUTRIGHT CERTIFICATION AND FOR A VOTE. HE URGED THAT UNPLEASANTRIES SHOULD BE AVOIDED AND REMINDED THE EMPLOYEES THAT WHETHER THE UNION CAME IN OR NOT, THEY WOULD ALL STILL HAVE TO WORK TOGETHER AT THEIR JOBS.

4. THE TESTIMONY OF LETOURNEAU WITH RESPECT TO THIS FIRST MEETING GENERALLY CONFORMED TO THAT OF LONG. THE FORMER SAID, THE COMPANY READ OFF THE LABOUR LAW. HE SAID IT WAS STATED THAT EMPLOYEES WHO HAD SIGNED FOR THE UNION HAD EVERY RIGHT TO DO SO. IT WAS ALSO EXPLAINED THAT ANYONE WHO WANTED TO OBJECT COULD DO SO. THE WITNESS SAID THAT WHEN HE LEARNED HE HAD THE RIGHT TO OBJECT, HE MADE UP HIS MIND THERE AND THEN TO DO SO.

5. JANISSE ALSO GAVE EVIDENCE AS TO WHAT TRANSPIRED AT THE MEETING IN THE LABORATORY. HE SAID THAT IT WAS EXPLAINED TO THEM WHAT POSITION THEY WERE IN. THE EMPLOYEES WERE TOLD THAT THERE WERE WAYS AND MEANS OF GETTING BEFORE THE LABOUR RELATIONS BOARD. IT WAS EXPLAINED THAT IT WAS NOT A ONE WAY DEAL AND WHAT COULD BE DONE. HE STATED, AS DID BOTH LONG AND LETOURNEAU, THAT NO REFERENCE HAD BEEN MADE BY MANAGEMENT TO A PETITION.

6. IT IS TO BE NOTED ALSO THAT THE COMPANY WAS ACCUSTOMED TO HOLD WHAT WERE REFERRED TO AS "COMMUNICATIONS MEETINGS" WITH ITS EMPLOYEES ON A MONTHLY OR BI-MONTHLY BASIS TO DISCUSS VARIOUS MATTERS THAT MIGHT HAVE ARISEN. THE MEETING IN THE LABORATORY WAS HELD BEFORE THE ARRIVAL OF THE FORMAL NOTICE OF APPLICATION, BUT AT A TIME, OBVIOUSLY, WHEN EVERY ONE CONCERNED WAS FULLY AWARE OF THE APPLICANT'S ORGANIZATIONAL ACTIVITIES.

7. WHILE THE EVIDENCE OF THE THREE WITNESSES AS TO THE MEETING IN THE LABORATORY IS GENERALLY OF SIMILAR IMPORT, THE SAME CANNOT BE SAID OF ALL THE EVIDENCE GIVEN WITH RESPECT TO THE TWO SUBSEQUENT MEETINGS. THESE MEETINGS WERE HELD IN THE FRENCH CANADIAN CLUB IN WINDSOR. JANISSE DESCRIBED THE FIRST OF THESE MEETINGS, HELD ON THE 6TH OR 7TH OF NOVEMBER, AS AN ORGANIZATION MEETING WITH RESPECT TO THE PETITION. HIS TESTIMONY WAS THAT HE ORGANIZED THE MEETING AND CALLED PEOPLE EITHER BY PHONE OR BY

DIRECT CONTACT. HE STATED AT FIRST THAT THERE WAS NO ONE FROM MANAGEMENT THERE. LATER, WHILE BEING QUESTIONED WITH RESPECT TO THE THIRD MEETING, HE STATED THAT LEBLANC, WHOM HE IDENTIFIED AS BEING FROM THE PERSONNEL OFFICE, WAS PRESENT AT BOTH MEETINGS. LEBLANC, ACCORDING TO MR. LONG'S TESTIMONY, IS THE COMPANY'S PERSONNEL SUPERVISOR.

8. LETOURNEAU'S EXPLANATION OF HOW HE CAME TO ATTEND THE FIRST MEETING IN THE FRENCH CANADIAN CLUB WAS SOMEWHAT DIFFICULT TO FOLLOW. HE STATED THAT HE WAS AT WORK ON THAT DAY WHEN HE WAS ADVISED BY HIS FOREMAN OF A CALL FROM HOME THAT HE WAS TO GO HOME. WHEN HE GOT HOME, HE RECEIVED A CALL FROM MR. LEBLANC ASKING IF HE WOULD BE INTERESTED IN ATTENDING A MEETING. AS A RESULT OF THIS CALL HE WENT TO THE MEETING AT THE CANADIAN CLUB. HE STATED THAT LEBLANC WANTED TO KNOW WHY THE EMPLOYEES WANTED THE UNION TO COME IN. HE STATED THAT LEBLANC TOOK NO PART IN THE DISCUSSIONS, BUT SIMPLY SAT AND LISTENED TO WHAT WAS SAID. THE WITNESS STATED THAT HE HIMSELF CHAIRED THE MEETING. HE SAID THERE WAS NO DISCUSSION OF A PETITION AT THIS MEETING. THIS SEEMS STRANGE IN VIEW OF JANISSE'S EVIDENCE THAT THE MEETING WAS CALLED TO ORGANIZE WITH RESPECT TO THE PETITION.

9. LONG DID NOT ATTEND EITHER OF THE MEETINGS HELD AT THE FRENCH CANADIAN CLUB AND CONSEQUENTLY COULD NOT TESTIFY AS TO WHAT WENT ON AT THE MEETINGS. HE WAS ABLE TO STATE HOWEVER THAT BOTH MEETINGS AT THE FRENCH CANADIAN CLUB WERE ORGANIZED BY THE COMPANY. HE STATED THAT THE FIRST MEETING AT THE CLUB WAS ARRANGED BY LEBLANC WHO INVITED THE EMPLOYEES TO COME TO TALK TO HIM. THE INVITATION IT MUST BE OBSERVED WAS NOT A GENERAL ONE, BUT WAS ISSUED TO CERTAIN EMPLOYEES WITH WHOM, IN MR. LONG'S WORDS, "MR. LEBLANC HAD SOME ACQUAINTANCE". AMONG THE INVITED WERE, OF COURSE, JANISSE AND LETOURNEAU, THE PROTAGONISTS OF THE PETITION. THE PURPOSE OF THIS MEETING, ACCORDING TO LONG, WAS TO SET UP A FURTHER MEETING FOR THE FOLLOWING SATURDAY.

10. LONG, AS NOTED ABOVE, STATED THAT THE SECOND MEETING HELD AT THE CLUB WAS ORGANIZED BY THE COMPANY. HE SAID SUCH MEETINGS WOULD NORMALLY BE DONE BY NOTICE. HE THOUGHT, IN THIS INSTANCE, IT WAS POSSIBLY DONE BY TELEPHONE. IT WAS CALLED HE SAID, BECAUSE THE COMPANY FELT SOME ONE FROM TOP MANAGEMENT SHOULD DISCUSS WITH THE EMPLOYEES WHAT CIRCUMSTANCES MIGHT HAVE GIVEN RISE TO THE SITUATION WITH RESPECT TO THE UNION. THE MEETING WAS ATTENDED BY MR. FARROW, VICE PRESIDENT AND MR. LEBLANC, THE PERSONNEL SUPERVISOR.

11. LETOURNEAU ON THE CONTRARY, SAID THAT THE MEETING REFERRED TO IN THE PRECEDING PARAGRAPH WAS ORGANIZED BY HIMSELF AND JANISSE. HE STATED THAT THEY INVITED LEBLANC TO ATTEND. HIS REASONS FOR CALLING THE SECOND MEETING WERE THAT THEY WERE NOT SATISFIED WITH THE TURN OUT AT THE FIRST FRENCH CANADIAN CLUB MEETING. HE STATED THAT THE VICE PRESIDENT FARROW WAS THERE ALSO. HE SAID, IF WE UNDERSTAND

HIM PROPERLY, THAT THEY WANTED TO FIND OUT THE PROBLEMS AND ISSUES WITH RESPECT TO THE EMPLOYEES AND THE UNION. HE STATED THAT "THEY HAD NOTHING TO SAY - JUST LAID IT ON THE TABLE". WHEN ASKED TO EXPLAIN THIS, HE MADE REFERENCE TO A UNION MEETING ON THE FRIDAY BEFORE WHEN THE UNION REPRESENTATIVE SAID SOMETHING ABOUT PEOPLE GOING TO THE MEETING TO FIND OUT - - . IT IS NOT CLEAR JUST WHAT WAS MEANT BY THIS PASSAGE. THE WITNESS STATED THAT THERE WAS A DISCUSSION WITH RESPECT TO THE PETITION AT THIS MEETING, BUT THAT BEFORE IT COMMENCED, THE VICE PRESIDENT WAS ASKED TO AND DID LEAVE THE MEETING ROOM. LEBLANC, THE PERSONNEL SUPERVISOR, REMAINED DURING THE DISCUSSION OF THE PETITION, BUT ACCORDING TO THE WITNESS, DID NOT TAKE PART IN THE CONVERSATION.

12. JANISSE STATED THAT LOUIS LEBLANC CALLED HIM ABOUT THE SECOND FRENCH CANADIAN CLUB MEETING, AND TOLD HIM THAT MANAGEMENT WOULD LIKE TO SPEAK TO THE EMPLOYEES AND TO EXPLAIN THE SITUATION. HE TESTIFIED THAT VICE PRESIDENT FARROW AND LEBLANC BOTH ATTENDED THIS MEETING.

13. IN ASSESSING THE SITUATION WITH RESPECT TO THE VOLUNTARY NATURE OF THE PETITION AND BY WAY OF A BRIEF RECAPITULATION, IT IS TO BE RECOLLECTED THAT WHATEVER MR. LONG MAY HAVE BELIEVED THE PURPOSE OF THE SECOND MEETING TO HAVE BEEN, JANISSE BELIEVED THAT THE MEETING, WHICH COMPRISED A GROUP SELECTED BY LEBLANC, WAS TO ORGANIZE FOR THE PETITION. AT THE THIRD MEETING, THE PETITION WAS IN FACT DISCUSSED IN THE PRESENCE OF LEBLANC AFTER THE DEPARTURE OF THE VICE PRESIDENT. THERE IS WITH RESPECT TO THIS MEETING THE UNANSWERED QUESTION AS TO WHY LETOURNEAU WOULD TESTIFY THAT HE AND JANISSE ORGANIZED THE MEETING, WHEREAS LONG STATED THAT THE COMPANY CALLED IT. IN ADDITION, THERE IS THE EVIDENCE OF CLOSE LIAISON BETWEEN JANISSE AND LETOURNEAU ON THE ONE HAND AND LEBLANC ACTING FOR THE COMPANY ON THE OTHER HAND.

14. HAVING IN MIND ALL OF THE FOREGOING EVIDENCE, WE ARE OF THE OPINION THAT THE CUMULATIVE EFFECT OF THE MEETINGS HELD, AS THEY WERE, IN THE PRESENCE OF HIGH LEVEL MANAGEMENT AND THE SURROUNDING CIRCUMSTANCES WHEN VIEWED OBJECTIVELY, MUST BE FOUND TO BE SUCH AS TO RAISE SERIOUS DOUBTS THAT THOSE EMPLOYEES WHO HAD SIGNED MEMBERSHIP CARDS IN THE APPLICANT UNION AND PAID AN INITIATION FEE, CHANGED THEIR MINDS OF THEIR OWN FREE WILL AND TO PROHIBIT A FINDING THAT THE EMPLOYEES VOLUNTARILY SIGNED THE PETITION IN OPPOSITION TO THE APPLICANT. THE BOARD THEREFORE FINDS THAT THE PETITION DOES NOT SUFFICIENTLY WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT SO AS TO CAUSE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

15. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

16. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT TECUMSEH, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

17. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 14, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

18. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER H. F. IRWIN:

NOVEMBER 27, 1968.

I DISSENT.

HAVING REGARD TO ALL THE EVIDENCE, I WOULD FIND THAT THE PETITION SUFFICIENTLY WEAKENS THE EVIDENCE OF MEMBERSHIP SO AS TO REQUIRE THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE.

15315-68-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L. - C.I.O. - C.L.C. LOCAL 197 (APPLICANT) V. NICK MASNEY HOTELS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R. W. TEAGLE.

APPEARANCES AT THE HEARING: WILLIAM A. ADAMS AND W. P. WOODS FOR THE APPLICANT, NICK MASNEY FOR THE RESPONDENT, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: NOVEMBER 25, 1968.

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2. THIS IS AN APPLICATION FOR CERTIFICATION. THE RESPONDENT IN THIS MATTER WAS ADVISED ON NOVEMBER 7TH, 1968 THAT THIS APPLICATION WOULD BE HEARD BY THE BOARD AT A HEARING TO BE HELD ON THURSDAY, NOVEMBER 21ST, 1968. THE RESPONDENT FILED A REPLY DATED NOVEMBER 15TH, 1968 IN THIS MATTER.

3. ON NOVEMBER 20TH, 1968, AT THE REQUEST OF THE RESPONDENT, THE PARTIES MUTUALLY AGREED THAT THE HEARING IN THIS MATTER BE ADJOURNED FROM NOVEMBER 21ST, 1968 TO NOVEMBER 27TH, 1968. THE REGISTRAR OF THE BOARD ADVISED THE PARTIES ON NOVEMBER 20TH, 1968 THAT THE BOARD WAS UNABLE TO RELIST THIS MATTER FOR HEARING ON NOVEMBER 27TH AS REQUESTED AND FURTHER ADVISED THAT THE EARLIEST DATE THAT THIS MATTER COULD BE HEARD BY THE BOARD WOULD BE DECEMBER 3RD, 1968. THE APPLICANT REFUSED TO CONSENT TO AN ADJOURNMENT OF THE HEARING TO DECEMBER 3RD, 1968 AND THIS MATTER CAME ON FOR HEARING AS SCHEDULED ON NOVEMBER 21ST, 1968, OVER THE OBJECTION OF COUNSEL FOR THE RESPONDENT.

4. AT THE HEARING HELD ON NOVEMBER 21ST, 1968, NICK MASNEY, THE PERSON WHO SIGNED THE RESPONDENT'S REPLY AS "PRESIDENT" OF THE RESPONDENT, APPEARED ON BEHALF OF THE RESPONDENT AND REQUESTED AN ADJOURNMENT ON THE GROUNDS THAT THE RESPONDENT WISHED TO HAVE COUNSEL PRESENT AT THE HEARING AND THAT COUNSEL WAS UNABLE TO BE PRESENT DUE TO THE FACT THAT COUNSEL FOR THE RESPONDENT WAS OTHERWISE ENGAGED.

5. THE APPLICANT OBJECTED TO THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT ON THE GROUNDS THAT WHILE THE APPLICANT HAD ORIGINALLY AGREED TO A ONE WEEK POSTPONEMENT OF THE HEARING, THE APPLICANT WAS NOT PREPARED TO AGREE TO A LONGER POSTPONEMENT DUE TO THE FACT THAT THE EMPLOYEES OF THE RESPONDENT WHOM THE APPLICANT SEEKS TO REPRESENT HAD EXPRESSED DISSATISFACTION WITH FURTHER DELAY. IN ADDITION, THE APPLICANT FILED ALLEGATIONS SIGNED BY EMPLOYEES OF THE RESPONDENT WHEREIN IT WAS ALLEGED THAT THE RESPONDENT HAD ATTEMPTED TO INTERFERE WITH THE EMPLOYEES' SELECTION OF A TRADE UNION.

6. MR. MASNEY ADVISED THE BOARD THAT HE HAD BEEN INSTRUCTED BY HIS COUNSEL TO WITHDRAW FROM THE PROCEEDINGS IF THE BOARD REFUSED TO GRANT THE ADJOURNMENT THAT WAS REQUESTED. WHEN MR. MASNEY STARTED TO LEAVE THE HEARING ROOM THE BOARD ADVISED MR. MASNEY THAT IT HAD NOT AS YET CONSIDERED THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT BUT THAT IN THE EVENT THAT MR. MASNEY WITHDREW, THE BOARD MIGHT PROCEED IN HIS ABSENCE.

7. THE BOARD RECESSED TO CONSIDER ALL THE FACTS RELATIVE TO THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT. FOLLOWING THE RECESS, THE BOARD ADVISED THE PARTIES THAT THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT WAS DENIED. THE BOARD'S DECISION TO DENY THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT WAS BASED ON THE BOARD'S PRACTICE TO GRANT ADJOURNMENTS ONLY ON CONSENT OF THE PARTIES OR WHERE THE REQUEST IS BASED ON CIRCUMSTANCES WHICH ARE COMPLETELY OUT OF THE CONTROL OF THE PARTY MAKING THE REQUEST AND WHERE TO PROCEED WOULD SERIOUSLY PREJUDICE SUCH PARTY, E.G., WHERE IT IS PROVEN THAT A WITNESS ESSENTIAL TO THE PARTY'S CASE IS UNABLE TO ATTEND BECAUSE OF SERIOUS ILLNESS. IT HAS

NOT BEEN THE PRACTICE OF THE BOARD TO GRANT ADJOURNMENTS MERELY FOR THE CONVENIENCE OF COUNSEL, AS WAS THE BASIS OF THE REQUEST IN THIS CASE. IT IS THE BOARD'S EXPERIENCE THAT DELAYS IN HEARINGS CAUSED BY ONE PARTY ALMOST INVARIABLY WORK TO THE SERIOUS DISADVANTAGE OF THE OTHER PARTY. THE APPLICANT IN THIS CASE OBJECTED TO DELAY THAT WOULD BE ENTAILED BECAUSE OF THE APPLICANT'S FEAR THAT THE RESPONDENT WOULD PERSIST IN THE UNFAIR PRACTICES WHICH THE APPLICANT ALLEGED AT THE HEARING.

8. THE BOARD THEREFORE ADVISED THE PARTIES THAT IT WOULD PROCEED TO ENTERTAIN THE MERITS OF THE APPLICATION ON NOVEMBER 21ST, IN ACCORDANCE WITH THE NOTICE OF HEARING SERVED UPON THE PARTIES. SHORTLY AFTER THE BOARD PROCEEDED TO SEEK REPRESENTATIONS FROM THE PARTIES WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT, MR. MASNEY AGAIN STARTED TO WITHDRAW FROM THE HEARING. THE BOARD ONCE MORE ADVISED MR. MASNEY THAT IF HE DECIDED TO FOLLOW HIS COUNSEL'S INSTRUCTIONS WITH RESPECT TO WITHDRAWING FROM THE PROCEEDINGS HE WOULD DO SO AT HIS PERIL SINCE THE BOARD HAD DECIDED TO PROCEED WITH THE HEARING AS SCHEDULED. MR. MASNEY AT THAT POINT LEFT THE HEARING ROOM AND THE BOARD CONTINUED WITH THE HEARING.

9. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

10. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ITS COLLINS HOTEL IN DUNDAS, SAVE AND EXCEPT OWNERS, MANAGERS, PERSONS ABOVE THE RANK OF MANAGER, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

11. FOR THE PURPOSES OF CLARITY, THE BOARD DECLARES THAT MARY JEAN THOMPSON, A PERSON CLASSIFIED BY THE RESPONDENT AS BOOKKEEPER, IS EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

12. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 15TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

13. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

(WRITTEN REASONS)

14593-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) v. CRANE CANADA LIMITED (RESPONDENT) v. INTERNATIONAL MOLDERS & ALLIED WORKERS UNION A.F.L.-C.I.O.-C.L.C. (INTERVENER).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
P.J. O'KEEFE: NOVEMBER 18, 1968.

1. THE INTERVENER BY ITS LETTER DATED SEPTEMBER 26TH, 1968 HAS REQUESTED THE BOARD TO GIVE WRITTEN REASONS FOR ITS ORAL DECISION MADE AT THE HEARING IN THIS MATTER, WHEREBY THE BOARD DECIDED TO ENTERTAIN THE CHARGES MADE BY THE APPLICANT.
2. THE APPLICANT IN THIS CASE FILED A NOTICE OF INTENTION TO MAKE ALLEGATIONS OF IMPROPER CONDUCT ON MAY 30TH, 1968. THIS MATTER CAME ON FOR HEARING IN THE FIRST INSTANCE ON JUNE 5TH, 1968.
3. AT THE HEARING IN THIS MATTER, THE INTERVENER CHALLENGED THE APPLICANT'S RIGHT TO ADDUCE EVIDENCE IN SUPPORT OF ITS CHARGES MADE AGAINST THE INTERVENER ON THE GROUNDS THAT THE APPLICANT HAD KNOWLEDGE OF THE EVENTS ABOUT WHICH IT COMPLAINED FOR SOME CONSIDERABLE TIME PRIOR TO THE TIME THAT THE CHARGES WERE MADE. THE INTERVENER ARGUED THAT SINCE THE APPLICANT DID NOT FILE NOTICE OF ITS INTENTION TO ALLEGE IMPROPER CONDUCT PROMPTLY UPON DISCOVERING THE ALLEGED IMPROPER CONDUCT, THE BOARD, PURSUANT TO THE PROVISIONS OF SECTION 47(2) OF THE BOARD'S RULES OF PROCEDURE, SHOULD NOT PERMIT THE APPLICANT TO ADDUCE EVIDENCE OF SUCH FACTS.
4. THE APPLICANT CALLED EVIDENCE WHICH SUPPORTED ITS CONTENTION THAT THE ALLEGATIONS OF IMPROPER CONDUCT WERE MADE PROMPTLY AFTER THE APPLICANT HAD AN OPPORTUNITY TO INVESTIGATE WHAT EVIDENCE WAS AVAILABLE TO IT. WHILE CERTAIN DISCREPANCIES WERE APPARENT WITH RESPECT TO THE TIME WHEN THE FACTS IN QUESTION FIRST CAME TO THE ATTENTION OF THE APPLICANT, THE BOARD IS SATISFIED THAT THE APPLICANT'S INVESTIGATION CONTINUED UP TO A DATE SHORTLY BEFORE THE APPLICANT'S CHARGES WERE FILED ON MAY 30TH, 1968. THE BOARD IS THEREFORE SATISFIED THAT ANY DELAY IN MAKING THE ALLEGATIONS WAS NOT DESIGNED TO PREJUDICE THE INTERVENER BUT WAS NECESSITATED TO ASCERTAIN WHETHER THE ALLEGATIONS HAD MERIT.
5. WHATEVER THE ADVISABILITY MAY BE FOR A PARTY TO FULLY INVESTIGATE ITS CHARGES BEFORE FILING THEM WITH THE BOARD, THE BOARD IS SATISFIED THAT WHEN SUCH CHARGES HAVE BEEN FILED SIX DAYS PRIOR TO THE HEARING, AS IN THIS CASE, THE PARTY FILING THE CHARGES HAS COMPLIED WITH THE PURPOSE AND INTENT OF SECTION 47(2) OF THE BOARD'S RULES OF PROCEDURE.
6. SECTION 47(2) OF THE BOARD'S RULES IS DESIGNED TO AVOID UNDUE DELAY BY REQUIRING THAT CHARGES BE FORMULATED AND FILED WITHIN SUCH TIME PRIOR TO THE HEARING IN ORDER THAT THE PARTY AGAINST WHOM THE ALLEGATIONS HAVE BEEN MADE WILL HAVE SUFFICIENT OPPORTUNITY TO PREPARE ITSELF TO MEET THE CHARGES. AFTER CHARGES ARE MADE IMMEDIATELY PRIOR TO THE HEARING AND THE PARTY AGAINST WHOM THE CHARGES WERE MADE HAS NOT HAD AN OPPORTUNITY TO PREPARE

ITSELF TO MEET THE CHARGES, AN ADJOURNMENT WOULD BE NECESSITATED TO PERMIT THE PARTY TO HAVE THE NECESSARY WITNESSES AVAILABLE TO MEET THE CHARGES.

7. WHERE, AS IN THIS CASE, THE PARTY AGAINST WHOM THE CHARGES HAVE BEEN MADE HAD SIX DAYS TO MEET THE ALLEGATIONS WHICH ARE DIRECTED TO THE ACTIVITIES OF ONLY ONE OF THE INTERVENER'S OFFICIALS, WE ARE OF OPINION THAT THE PURPOSE AND INTENT OF SECTION 47(2) HAS BEEN SERVED AND ACCORDINGLY THE CHARGES ARE TIMELY.

8. THE INTERVENER ALSO ASKED FOR ADDITIONAL PARTICULARS INCLUDING THE NAMES OF THE EMPLOYEES OF THE RESPONDENT TO WHOM THE INTERVENER'S OFFICIAL MADE THE PROMISES OF CONDITIONAL PAYMENT. SECTION 47(1) REQUIRES A PARTY TO PARTICULARIZE HIS CHARGES BY FILING "A CONCISE STATEMENT OF THE MATERIAL FACTS, ACTIONS AND OMISSIONS UPON WHICH HE INTENDS TO RELY AS CONSTITUTING SUCH IMPROPER OR IRREGULAR CONDUCT, INCLUDING THE TIME WHEN AND THE PLACE WHERE THE ACTIONS OR OMISSIONS COMPLAINED OF OCCURRED AND THE NAMES OF THE PERSONS WHO ENGAGED IN OR COMMITTED THEM, BUT NOT THE EVIDENCE BY WHICH THE MATERIAL FACTS, ACTIONS OR OMISSIONS ARE TO BE PROVED." IN THIS CASE, THE APPLICANT GAVE PARTICULARS OF THE IMPROPER CONDUCT ALLEGED IN THE FOLLOWING FORM: "ON OR ABOUT WEDNESDAY, APRIL 24TH, ONE M. CAPRI, ON BEHALF OF THE INTERVENER, CALLED ON AN EMPLOYEE OF THE RESPONDENT AT THAT EMPLOYEE'S HOME IN THE CITY OF BRANTFORD, AND IN REQUESTING THAT THE EMPLOYEE JOIN THE INTERVENER UNION, SAID: 'IF WE DON'T GET IN YOU WON'T LOSE ANYTHING BECAUSE YOUR ONE DOLLAR WILL BE RETURNED', OR WORDS TO LIKE EFFECT."

9. SINCE THE APPLICANT HAS INCLUDED THE TIME WHEN, THE PLACE WHERE AND THE NAME OF THE PERSONS WHO ENGAGED IN THE ACTION COMPLAINED OF, WE FIND THAT THE REQUIREMENTS OF SECTION 47(1) HAVE BEEN COMPLIED WITH.

10. THE PERSONS TO WHOM THE PROMISES WERE MADE CANNOT BE SAID TO HAVE "ENGAGED" IN IMPROPER CONDUCT. ONLY THE PERSON WHO MADE THE PROMISE NEED BE NAMED BY THE APPLICANT.

11. A PARTY MAKING ALLEGATIONS NEED NOT IDENTIFY HIS WITNESS UNLESS THE WITNESS IS THE PERSON WHO COMMITTED THE IMPROPER ACT COMPLAINED OF.

12. FOR THE ABOVE REASONS AND FOR THE REASONS GIVEN ORALLY AT THE HEARING, WE THEREFORE FIND THAT THE APPLICANT'S ALLEGATIONS OF IMPROPER CONDUCT AGAINST THE INTERVENER WERE PARTICULARIZED IN A MANNER WHICH WAS IN COMPLIANCE WITH SECTION 47 OF THE BOARD'S RULES OF PROCEDURE AND WERE TIMELY. SINCE THE BOARD IS SATISFIED THAT THE INTERVENER WAS NOT UNFAIRLY PREJUDICED BY THE MANNER IN WHICH THE CHARGES WERE FRAMED AND THE TIME AT WHICH THEY WERE MADE, THE BOARD DETERMINES THAT THE APPLICANT IS ENTITLED TO CALL EVIDENCE IN SUPPORT OF ITS ALLEGATIONS.

DECISION OF BOARD MEMBER J.E.C. ROBINSON:

NOVEMBER 18, 1968.

I CONCUR WITH THE FINDING OF THE MAJORITY THAT THE CHARGES LAID BY THE APPLICANT AGAINST THE INTERVENER UNION IN THESE CIRCUMSTANCES WERE TIMELY.

WHILE THE GENERAL PRONOUNCEMENTS OF THE MAJORITY IN THIS CASE WITH RESPECT TO THE TIMELINESS IN THE FILING OF CHARGES MAY PROPERLY DEAL WITH THE SPECIFIC ISSUES IN THIS CASE, I WISH TO MAKE IT CLEAR THAT, IN MY OPINION, THE DECISIONS IN FLECK MANUFACTURING CASE, 62 CLLC 1046, C.L.S. 76-860, AND SEAWAY APPAREL LTD. CASE, O.L.R.B. MONTHLY REPORT, MAY 1967, P. 145, DECIDED BY PANELS OF THE BOARD DIFFERENTLY COMPOSED, AS THEY REFER TO THE TIMELINESS IN LAYING CHARGES, HAVE FAR MORE AUTHORITY AS PRECEDENTS FOR THE FUTURE THAN DO VIEWS OF THE MAJORITY IN THIS CASE ON THAT SUBJECT.

IF PARAGRAPHS NUMBERED 8, 9, 10 AND 11 ARE INTENDED TO SET OUT THE GENERAL POLICY OF THE BOARD WITH RESPECT TO THE SUFFICIENCY OF PARTICULARS IN ALLEGATIONS OF IMPROPER OR IRREGULAR CONDUCT, I CANNOT AGREE WITH SUCH FINDING.

THE PURPOSE OF SECTION 47(1) OF THE BOARD'S RULES, IN MY OPINION, IS TO PROVIDE THE PERSON AGAINST WHOM THE CHARGES HAVE BEEN MADE AN OPPORTUNITY TO PREPARE A DEFENCE, IF ANY, TO SUCH CHARGES. IF THAT BE SO, THE PERSON AGAINST WHOM CHARGES HAVE BEEN MADE MUST HAVE SUFFICIENT PARTICULARITY IN THE CHARGES THAT HE IS ABLE TO DIRECT HIS MIND TO THE OCCURRENCE IN ORDER TO PREPARE HIS DEFENCE. ANYTHING SHORT OF THAT IS A COMPLETE DEPRIVATION OF HIS RIGHT.

THUS, WHEN IN PARAGRAPH 9 OF THE MAJORITY DECISION THEY SAY:- "SINCE THE APPLICANT HAS INCLUDED THE TIME WHEN, THE PLACE WHERE AND THE NAME OF THE PERSONS WHO ENGAGED IN THE ACTION COMPLAINED OF, WE FIND THAT THE REQUIREMENTS OF SECTION 47(1) HAVE BEEN COMPLIED WITH, "I MUST SAY THAT I AM NOT IN AGREEMENT.

FOR EXAMPLE, IF THE ALLEGATION (IN A HYPOTHETICAL SITUATION) HAD BEEN THAT "ON OR ABOUT WEDNESDAY, APRIL 24TH, ONE JOE DOE SPOKE TO AN EMPLOYEE, AT THE STEEL COMPANY OF CANADA LIMITED, IN THE CITY OF HAMILTON AND IN REQUESTING THAT THE EMPLOYEE JOIN THE UNION, SAID: 'IF WE DON'T GET IN YOU WON'T LOSE ANYTHING BECAUSE YOUR ONE DOLLAR WILL BE RETURNED', "WOULD THE MAJORITY FIND THAT SECTION 47(1) HAD BEEN COMPLIED WITH. IF THE MAJORITY WERE TO BE CONSISTENT, I WOULD THINK THAT IT WOULD, OF NECESSITY, HAVE TO MAKE SUCH A FINDING. I DO NOT, HOWEVER, THINK THAT SUCH FINDING WOULD BE CORRECT.

I AM OF THE OPINION, THEREFORE, THAT THERE ARE CASES IN WHICH THE CIRCUMSTANCES ARE SUCH THAT IT IS NECESSARY TO IDENTIFY THE PERSON WITH WHOM THE ALLEGED ACTIONS OR OMISSIONS OCCURRED, IN ORDER TO IDENTIFY "THE TIME WHEN AND THE PLACE WHERE", CONTEMPLATED BY SECTION 47(1), IN THE MIND OF THE PERSON AGAINST WHOM THE COMPLAINT IS MADE. I BELIEVE THIS TO BE EVEN THOUGH IN IDENTIFYING SUCH PERSON, SUCH PERSON MAY BE CALLED AS A WITNESS IN SUBSTANTIATING THE MISCONDUCT BEFORE THIS BOARD. THE WITNESS HERE WOULD BE SO INTERWOVEN WITH THE PARTICULARS THAT HE MUST BE NAMED QUA TIME AND PLACE OF THE OFFENCE, RATHER THAN QUA WITNESS, IF SECTION 47(1) IS TO HAVE ANY RATIONAL MEANING AT ALL.

INDEED, IN THE INSTANT CASE, THERE WERE OCCASIONS WHEN THE PAUCITY OF PARTICULARS, AND THE MISSTATEMENT OF SUCH PARTICULARS, WERE SUCH THAT THE INTERVENER WOULD HAVE GREAT DIFFICULTY IN PREPARING HIS DEFENCE. THIS PROBLEM WOULD HAVE BEEN OVERCOME, IF THE PARTICULARS HAD DISCLOSED THE NAME OF THE EMPLOYEE WITH WHOM CAPRI, ON BEHALF OF THE INTERVENER, HAD COMMITTED HIS MISCONDUCT.

INDEXED ENDORSEMENTS - TERMINATION

15240-68-R: WEST END CHRYSLER DODGE LTD. (APPLICANT) V. LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (RESPONDENT).

(RE: WEST END CHRYSLER DODGE LTD.,
METROPOLITAN TORONTO).

BEFORE: H. D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND O. HODGES.

APPEARANCES AT THE HEARING: NEIL WALSH, WESLEY SCOTT FOR THE APPLICANT AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 7, 1968.

1. THIS IS AN APPLICATION MADE PURSUANT TO THE PROVISIONS OF SECTION 45(2) OF THE LABOUR RELATIONS ACT FOR A DECLARATION THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT FOR WHICH IT IS THE BARGAINING AGENT.

2. THE RESPONDENT WAS CERTIFIED BY THE BOARD ON MAY 22ND, 1968 FOR ALL NEW AND USED MOTOR VEHICLE SALESMEN IN METROPOLITAN TORONTO WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. ON JULY 2ND, 1968, THE RESPONDENT GAVE TO THE APPLICANT NOTICE OF ITS INTENTION TO BARGAIN. SINCE THAT DATE, HOWEVER, THE RESPONDENT HAS IN NO WAY COMMUNICATED WITH THE APPLICANT OR MET WITH IT TO COMMENCE TO BARGAIN. THE RESPONDENT DID NOT FILE A REPLY TO THIS APPLICATION OR APPEAR AT THE HEARING.

3. SECTION 45(2) OF THE ACT PROVIDES INTER ALIA THAT IF A TRADE UNION HAVING GIVEN NOTICE UNDER SECTION 11 OR SECTION 40 FAILS TO COMMENCE TO BARGAIN WITHIN 60 DAYS FROM THE GIVING OF THE NOTICE, UPON THE APPLICATION OF THE EMPLOYER, WITH OR WITHOUT A REPRESENTATION VOTE DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT. THIS APPLICATION WAS MADE ON OCTOBER 21ST, 1968 WELL OVER THE 60 DAY PERIOD REFERRED TO IN THE SECTION. WE FIND THAT THE APPLICATION IS TIMELY.

4. IN VIEW OF THE PERIOD OF TIME THAT HAS ELAPSED SINCE NOTICE TO BARGAIN WAS GIVEN WITHOUT ANY COMMUNICATION WHATSOEVER BY THE RESPONDENT AND HAVING REGARD TO THE FAILURE OF THE RESPONDENT TO REPLY AND APPEAR AT THE HEARING IN THIS MATTER, THE BOARD IS OF THE OPINION THAT THE APPLICANT IS ENTITLED TO THE RELIEF WHICH IT IS SEEKING WITHOUT THE TAKING OF A REPRESENTATION VOTE.

5. THE BOARD THEREFORE DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF WEST END CHRYSLER DODGE LTD. IN METROPOLITAN TORONTO FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

15286-68-R: EMPLOYEES OF THE BRANTFORD GENERAL HOSPITAL WHO ARE MEMBERS OF THE B.S.E.I.U. LOCAL 204 (APPLICANT) V. BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION (RESPONDENT).

(RE: BRANTFORD GENERAL HOSPITAL,
BRANTFORD, ONTARIO).

BEFORE: J. D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: AUSTIN LEYLAND FOR THE APPLICANT, M. LEVINSON, J.N. HUGHES AND T. ROSCOE FOR THE RESPONDENT, W.L. FARRAR, K.G. MUIR AND H.L. SCHULER FOR BRANTFORD GENERAL HOSPITAL.

DECISION OF THE BOARD: NOVEMBER 20, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT PURSUANT TO THE PROVISIONS OF SECTION 43 OF THE LABOUR RELATIONS ACT.

2. THE RESPONDENT IS A PARTY TO A COLLECTIVE AGREEMENT WITH BRANTFORD GENERAL HOSPITAL WHICH BY ITS TERMS WAS ENTERED INTO ON JULY 26TH, 1966 AND CONTINUES IN EFFECT UNTIL DECEMBER 31ST, 1968.

3. THIS APPLICATION WAS FILED WITH THE BOARD BY REGISTERED MAIL ON OCTOBER 31ST, 1968 AND ACCORDINGLY, PURSUANT TO THE PROVISIONS OF SECTION 50(1)(B) OF THE BOARD'S RULES OF PROCEDURE, IS DEEMED TO HAVE BEEN MADE ON OCTOBER 31ST, 1968.

4. SECTION 43(2)(A) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

43.--(2) ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DEFINED IN A COLLECTIVE AGREEMENT MAY, SUBJECT TO SECTION 46, APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT,

(A) IN THE CASE OF A COLLECTIVE AGREEMENT FOR A TERM OF NOT MORE THAN THREE YEARS, ONLY AFTER THE COMMENCEMENT OF THE LAST TWO MONTHS OF ITS OPERATION;

5. SINCE THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND BRANTFORD GENERAL HOSPITAL IS A COLLECTIVE AGREEMENT FOR A TERM OF NOT MORE THAN THREE YEARS, IT THEREFORE FOLLOWS, PURSUANT TO THE PROVISIONS OF SECTION 43(2)(A) OF THE ACT, THAT AN APPLICATION TO TERMINATE THE BARGAINING RIGHTS OF THE RESPONDENT CAN ONLY BE MADE DURING THE LAST TWO MONTHS OF OPERATION OF THE SAID COLLECTIVE AGREEMENT. THE LAST TWO MONTHS OF OPERATION OF THE COLLECTIVE AGREEMENT IN THIS MATTER WOULD THEREFORE BE THE MONTHS OF NOVEMBER AND DECEMBER, 1968, AND ACCORDINGLY THE INSTANT APPLICATION WHICH WAS MADE PRIOR TO THE MONTH OF NOVEMBER, 1968 IS PREMATURE.

6. FOR REASONS SIMILAR TO THE REASONS GIVEN BY THE BOARD IN DOMINION BUILDING MATERIALS LIMITED CASE, O.L.R.B. MONTHLY REPORT, JUNE 1965, P. 237, THE BOARD FINDS THAT IN THE CIRCUMSTANCES OF THIS CASE THIS APPLICATION IS UNTIMELY.

7. THIS APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - LOCK-OUT UNLAWFUL

15187-68-U: INTERNATIONAL UNION OF DOLL & TOY WORKERS OF THE U.S.A. & CANADA (APPLICANT) V. CLAUDE ABRAMS COMPANY LIMITED OPERATING AS PUBLIC OPTICAL (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFFE.

APPEARANCES AT THE HEARING: J. SACK FOR THE APPLICANT AND ROBERT B. BURGESS FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 4, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A LOCK-OUT CALLED OR AUTHORIZED BY THE RESPONDENT IS UNLAWFUL.

2. THE EVIDENCE IN PART IS THAT ON AUGUST 30TH, 1968, THE APPLICANT APPLIED FOR CERTIFICATION FOR A CERTAIN NUMBER OF EMPLOYEES OF THE RESPONDENT. AS OF THE DATE OF THE HEARING IN THIS MATTER, NO DECISION HAD BEEN ISSUED BY THE BOARD IN RESPECT TO THE APPLICATION FOR CERTIFICATION. ON OCTOBER 3RD, THE RESPONDENT DISCHARGED AN EMPLOYEE NAMED BENCHIMOL. THE APPLICANT ADDUCED EVIDENCE THAT THE OTHER EMPLOYEES WERE CONCERNED WITH THE DISCHARGE OF THIS EMPLOYEE AND AT A MEETING OF THE EMPLOYEES HELD AT THE HOME OF THE UNION REPRESENTATIVE THEY APPOINTED GEORGE TAYLOR TO BE THEIR SPOKESMAN TO ASK THE RESPONDENT FOR THE REAL REASON FOR HIS DISMISSAL. ON FRIDAY MORNING, GEORGE TAYLOR WENT TO SEE MR. CLAUDE ABRAMS ABOUT THIS MATTER. ABRAMS REFUSED TO TALK TO HIM ABOUT ANY OTHER MATTER EXCEPT TAYLOR'S OWN JOB AND TOLD TAYLOR THAT IF HE DID NOT GO BACK TO WORK HE WOULD BE DISCHARGED. TAYLOR RETURNED TO WORK AND TOLD THE OTHER EMPLOYEES HE DID NOT HAVE A CHANCE TO DISCUSS THE DISMISSAL WITH ABRAMS. TAYLOR SAID THAT HE WAS NOT TOLD THAT HE COULD NOT WORK FOR THE RESPONDENT BUT HE DID NOT RETURN TO WORK ON MONDAY AS A PICKET LINE HAD BEEN SET UP AND HE WOULD NOT CROSS IT. JOHN FRANCOEUR TESTIFIED THAT AFTER BENCHIMOL WAS DISCHARGED HE WAS AFRAID THAT ANYONE COULD BE DISCHARGED AND HE WENT TO SEE ABRAMS ABOUT IT TO ASK HIM WHAT TO DO AND HE TOLD HIM THAT HE WAS A FREE MAN AND TO DO WHAT HE WANTED. HE HAD HEARD ON FRIDAY, BEFORE TAYLOR TALKED TO ABRAMS, THAT THE OTHERS WERE GOING TO WALK OUT.

3. LORNE PARKMAN SAID HE THOUGHT THAT BENCHIMOL WAS DISCHARGED FOR HIS UNION ACTIVITIES AND HE WAS AFRAID FOR HIS OWN EMPLOYMENT. ON SATURDAY, OCTOBER 5TH AT 11:00 A.M. HE AND THE OTHER EMPLOYEES WALKED OUT OF THE RESPONDENT'S PREMISES AFTER WHICH ABRAMS CAME TO THEM AND TOLD THEM IF THEY DID NOT GET BACK TO WORK THEY WOULD BE FIRED. ONE EMPLOYEE DID RETURN TO WORK AT THAT TIME. THEN THE OTHERS WENT BACK TO THE PREMISES TO LEAVE THEIR WHITE COATS AND ABRAMS GAVE THEIR UNEMPLOYMENT INSURANCE BOOKS TO ONE OF THE EMPLOYEES WHO DISTRIBUTED THE BOOKS TO THE OTHERS. HE SAID THAT ABRAMS WAS AWARE ON FRIDAY THAT THE EMPLOYEES WERE PLANNING TO WALK OUT ON SATURDAY. PARKMAN STATED THAT HE WOULD LIKE TO RETURN TO WORK ONLY IF THE RESPONDENT'S ATTITUDE CHANGED AND WHEN THE UNION IS CERTIFIED. ON SEPTEMBER 27TH, HE APPEARED AS A WITNESS IN A HEARING IN CONNECTION WITH THE APPLICATION FOR CERTIFICATION AND WAS SUBSEQUENTLY TRANSFERRED FROM THE FRONT OF THE STORE TO THE BACK TO WHICH HE DID NOT OBJECT AS THE WAGES AND HOURS WERE THE SAME IN EITHER CASE. HIS OPINION WAS THAT BENCHIMOL'S WORK WAS SATISFACTORY AND HE SAID THE EMPLOYEES HAD NO OTHER ALTERNATIVE BUT TO WALK OUT.

4. MR. BENCHIMOL SAID THAT HE WAS FIRED AND HE DID NOT KNOW WHY. HE HAD RECEIVED THREE RAISES SINCE HE STARTED HIS EMPLOYMENT AND HAD NOT BEEN CRITICIZED. HE WAS TOLD HE HAD NOT DONE HIS WORK CORRECTLY AS SOME OF THE LENSES ON WHICH HE WAS WORKING WERE SCRATCHED OR HAZY. HE SAID HE JOINED THE UNION BY FORCE AND THAT HIS RELATIONSHIP WITH HIS BOSS WAS GOOD.

5. WITHOUT DEALING IN DETAIL FOR THE REASONS EXPRESSED, THE RESPONDENT'S EVIDENCE WAS THAT THE PRESIDENT OF THE RESPONDENT DECIDED THAT BENCHIMOL'S WORK WAS NOT SATISFACTORY AND ACCORDINGLY HE WAS DISCHARGED ON THURSDAY, OCTOBER 3RD. LOUIS ABRAMS SAID THAT THE EMPLOYEES HAD BROUGHT BENCHIMOL'S WORK TO HIS ATTENTION. ON THURSDAY, FRANCOEUR TOLD ABRAMS THAT GEORGE TAYLOR WOULD BE COMING TO SEE HIM ABOUT REHIRING BENCHIMOL WHICH, IF NOT DONE, THEY WOULD WALK OUT. AFTER HIS DISCUSSION WITH TAYLOR HE THOUGHT THE PROBLEM WAS OVER BUT ON SATURDAY MORNING AT ABOUT 9:30 A.M. HE WAS TOLD THAT THE EMPLOYEES WERE WALKING OUT AT 11:00 A.M., FOUR OF WHOM DID SO. ABRAMS, ALONG WITH SHARON PARKMAN, WENT OUT TO MEET THEM ON THE SIDEWALK AND SAID TO THEM TO FORGET ABOUT IT AND TO COME BACK IN TO WORK. AFTER THEY REFUSED HE OBTAINED THE UNEMPLOYMENT INSURANCE BOOKS WHICH HE SAID WERE ONE MONTH BEHIND, AND GAVE THEM ALL TO ONE OF THE EMPLOYEES. SUBSEQUENTLY, THE EMPLOYEES WERE ON THE SIDEWALK IN FRONT OF THE STORE CARRYING SIGNS. HE DENIED ANY KNOWLEDGE THAT BENCHIMOL WAS A UNION MEMBER AND ALSO DENIED KNOWLEDGE OF A PETITION AGAINST THE UNION THAT HAD BEEN CIRCULATED. HE SAID THAT HE HAD ONLY EXPLAINED TO THE EMPLOYEES THE MEANING OF FORM 5 (NOTICE TO EMPLOYEES) WHICH HAD BEEN POSTED AT THE TIME THE APPLICATION FOR CERTIFICATION WAS MADE.

FRANCOEUR'S EVIDENCE WAS THAT ABRAMS HAD ASKED HIM TO TAKE A PETITION TO THE EMPLOYEES TO SIGN AGAINST THE UNION. DURING ABRAM'S DISCUSSIONS CONCERNING THE NOTICE HE TOLD THE EMPLOYEES THEY COULD HAVE THE SAME DEAL AS THE UNION COULD GET THEM AND THEY WANTED THAT IN WRITING TO WHICH HE REPLIED WHATEVER THEY WANTED THEY COULD HAVE.

6. IT IS NOT NECESSARY IN THE RESULT OF THIS MATTER TO DEAL IN DETAIL WITH THE MANY CONTRADICTIONS IN THE EVIDENCE BETWEEN THE APPLICANT'S WITNESSES AND THOSE OF THE RESPONDENT. THE DETERMINATION FOR THE BOARD TO MAKE IN THIS MATTER IS WHETHER THE EMPLOYER ENGAGED IN AN UNLAWFUL LOCKOUT AND, IF SO, SHOULD THE BOARD EXERCISE ITS DISCRETION AND ISSUE SUCH A DECLARATION. A LOCKOUT IS DEFINED UNDER THE ACT IN SECTION 1 (1)(g) AS FOLLOWS:

"LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYER'S ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES;

THE EVIDENCE ESTABLISHES THAT SOME OF THE EMPLOYEES OF THE RESPONDENT CONCERNED, UNILATERALLY DECIDED TO ENGAGE IN A WALKOUT IN SYMPATHY WITH THE DISCHARGED EMPLOYEE AND WITH THE HOPE THAT THEIR ACTION WOULD FORCE OR PERSUADE THEIR EMPLOYER TO RECONSIDER ITS POSITION AND TO REINSTATE BENCHIMOL. AFTER THE EMPLOYEES LEFT THE PREMISES ON SATURDAY MORNING, MR. ABRAMS TALKED TO THEM AND ATTEMPTED TO HAVE THEM RETURN TO THEIR JOBS. THE EMPLOYEES REFUSED. SUBSEQUENTLY, ABRAMS GAVE TO ONE OF THE EMPLOYEES ALL OF THEIR UNEMPLOYMENT INSURANCE BOOKS TO BE DISTRIBUTED AND THE EMPLOYEES WHO WALKED OUT WERE DISCHARGED. ALTHOUGH THE EVIDENCE IS NOT CLEAR AS TO THE NUMBER OF OTHER EMPLOYEES WHO REMAINED AT WORK, THE RESPONDENT DID CONTINUE ITS OPERATIONS. IT IS NOT SUFFICIENT TO SHOW MERELY A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES. THERE MUST ALSO BE ESTABLISHED THAT THE EMPLOYER ACTED "WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES" TO REFRAIN FROM EXERCISING CERTAIN RIGHTS OR PRIVILEGES UNDER THE ACT. WE CANNOT ACCEPT THE APPLICANT'S CONTENTION THAT THE RESPONDENT KNOWINGLY PROVOKED THE EMPLOYEES TO TAKE THE ACTION THEY DID. WE ARE NOT

CALLED UPON TO CONSIDER THE POLICY OF THE RESPONDENT IN ITS MANNER OF HANDLING THE SITUATION BUT ONLY WHETHER ITS ACTIONS CONSTITUTED AN UNLAWFUL LOCKOUT WITHIN THE MEANING OF THE ACT. THERE IS NO EVIDENCE THAT ABRAMS ATTEMPTED TO COMPEL HIS EMPLOYEES NOT TO EXERCISE THEIR RIGHTS UNDER THE ACT. INDEED, AFTER THE EMPLOYEES HAD WALKED OUT OF THE PREMISES ON SATURDAY MORNING, THE UNDISPUTED EVIDENCE IS THAT ABRAMS ASKED THEM TO RETURN TO THEIR JOBS. IT WAS ONLY AFTER THEIR SUBSEQUENT REFUSAL TO RETURN TO WORK THAT HE TOOK ACTION AGAINST THEM.

7. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES THE APPLICANT HAS NOT ESTABLISHED A CASE OF UNLAWFUL LOCKOUT.

8. THE APPLICATION IS ACCORDINGLY DISMISSED.

INDEXED ENDORSEMENT - PROSECUTION

15206-68-U: INTERNATIONAL UNION OF DOLL AND TOY WORKERS OF THE UNITED STATES AND CANADA (APPLICANT) V. CLAUDE ABRAMS INDUSTRIES LTD. AND LOUIS WILLIAM ABRAMS (RESPONDENTS).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: ANGEL D. RIVERA AND GEORGE TAYLOR FOR THE APPLICANT, AND ROBERT B. BURGESS FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 29, 1968.

1. THIS IS AN APPLICATION FOR CONSENT TO INSTITUTE PROSECUTION PURSUANT TO SECTION 74 OF THE LABOUR RELATIONS ACT. AT THE COMMENCEMENT OF THE HEARING THE APPLICANT ADVISED THE BOARD THAT HE WAS NOT PROCEEDING WITH THE ALLEGED OFFENCES BROUGHT PURSUANT TO SECTIONS 54, 56, 50, 59A OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT THEN PROCEEDED WITH THE REMAINING ALLEGED OFFENCES WHICH ARE AS FOLLOWS:

(A) THE RESPONDENT COMPANY BY THE RESPONDENT ABRAMS VIOLATED SECTION 48 OF THE LABOUR RELATIONS ACT IN THAT IT DID INTERFERE WITH THE FORMATION OF A TRADE UNION BY THE COUNSELLING AND PROCURING OF A PETITION AGAINST THE UNION AMONG THE EMPLOYEES IN THE FIRST WEEK OF SEPTEMBER 1968.

(B) THE RESPONDENT ABRAMS VIOLATED SECTION 52 OF THE LABOUR RELATIONS ACT BY INTIMIDATING HIS EMPLOYEES DURING THE MONTH OF SEPTEMBER BECAUSE OF THEIR UNION ACTIVITY.

3. IT WAS AGREED BY BOTH PARTIES THAT ALL OF THE EVIDENCE PRESENTED WOULD BE APPLICABLE TO BOTH ALLEGED OFFENCES.

4. SECTION 48 OF THE LABOUR RELATIONS ACT PROVIDES INTER ALIA:

"NO EMPLOYER OR EMPLOYERS' ORGANIZATION AND NO PERSON ACTING ON BEHALF OF AN EMPLOYER OR AN EMPLOYERS' ORGANIZATION SHALL PARTICIPATE IN OR INTERFERE WITH THE FORMATION, SELECTION OR ADMINISTRATION OF A TRADE UNION OR THE REPRESENTATION OF EMPLOYEES BY A TRADE UNION OR CONTRIBUTE FINANCIAL OR OTHER SUPPORT TO A TRADE UNION,..."

5. TURNING TO THE EVIDENCE AS APPLIED TO THE FIRST OFFENCE EVEN IF WE WERE TO ASSUME, BUT WITHOUT FINDING, THAT A PETITION WAS COUNSELLED AND PROCURRED AMONG THE EMPLOYEES IN THE FIRST WEEK OF SEPTEMBER 1968, WE FIND THAT THE APPLICANT HAS FAILED TO ADDUCE ANY EVIDENCE THAT THERE WAS A "FORMATION" AS DISTINGUISHED FROM "SELECTION OR ADMINISTRATION OF A TRADE UNION". ACCORDINGLY WE CANNOT FIND THAT THE ALLEGED ACTS INTERFERED WITH THE FORMATION OF A TRADE UNION WITHIN THE MEANING OF SECTION 48 OF THE LABOUR RELATIONS ACT AND THEREFORE THE APPLICATION WITH RESPECT TO THE FIRST ALLEGED OFFENCE IS DISMISSED. WE NOTE FURTHER THAT THE TRADE UNION WITH WHICH WE ARE CONCERNED HAD PROVED ITS STATUS AND HAS HAD A CERTIFICATION HISTORY BEFORE THIS BOARD AT LEAST SINCE 1964 WHICH WAS LONG BEFORE THE ALLEGED OFFENCE.

6. HAVING REGARD TO ALL THE EVIDENCE ADDUCED, THE BOARD CONSENTS TO THE INSTITUTION OF A PROSECUTION WITH RESPECT TO THE SECOND ALLEGED OFFENCE THAT:

(B) THE RESPONDENT ABRAMS VIOLATED SECTION 52 OF THE LABOUR RELATIONS ACT BY INTIMIDATING HIS EMPLOYEES DURING THE MONTH OF SEPTEMBER BECAUSE OF THEIR UNION ACTIVITY.

7. THE APPROPRIATE DOCUMENTS WILL ISSUE.

INDEXED ENDORSEMENTS - SECTION 65

14708-68-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SCEPTER MANUFACTURING COMPANY LIMITED (RESPONDENT).

- AND -

14753-68-U: UNITED RUBBER, CORK, LINOLEUM AND PLASTIC WORKERS OF AMERICA, AFL-CIO-CLC (COMPLAINANT) V. SCEPTER MANUFACTURING COMPANY LIMITED (RESPONDENT).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

APPEARANCES AT THE HEARING: JOHN OSLER, Q.C., AND LEONARD C. COLLINS FOR THE COMPLAINANT, BENJAMIN LAMB AND THOMAS TOROKVEI FOR THE RESPONDENT.

DECISION OF THE BOARD: NOVEMBER 4, 1968.

1. THE COMPLAINANT HAS COMPLAINED THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 48 AND 50(A) OF THE LABOUR RELATIONS ACT, AND REQUESTS THAT THE AGGRIEVED PERSONS BE REINSTATED IN THEIR EMPLOYMENT WITH COMPENSATION. THE FACTS OF THIS CASE ARE AS FOLLOWS. THE COMPLAINANT MADE APPLICATION FOR CERTIFICATION FOR CERTAIN EMPLOYEES OF THE RESPONDENT ON MAY 31ST, 1968. IT WOULD APPEAR THAT THE RESPONDENT WAS SERVED NOTICE OF THIS APPLICATION ON JUNE 4TH, 1968. ON JUNE 5TH AND 6TH, A SUBSTANTIAL NUMBER OF THE RESPONDENT'S EMPLOYEES WERE LAID OFF ON THE GROUNDS THAT THERE WAS NO WORK AVAILABLE FOR THEM.
2. THE COMPLAINANT WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT ON JULY 17TH, 1968.
3. DURING THE LATTER PART OF AUGUST 1968, SIX OF THE LAID OFF EMPLOYEES WERE RECALLED TO WORK AND AN ADDITIONAL THREE EMPLOYEES WERE RECALLED BUT REFUSED TO RETURN TO WORK. IN ADDITION, THE EVIDENCE DISCLOSED THAT AT THE TIME OF LAY-OFF THE RESPONDENT OFFERED ONE OF THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED A POSITION ON THE NIGHT SHIFT. HOWEVER, THAT EMPLOYEE WAS NOT PREPARED TO SWITCH SHIFTS AND WAS LAID OFF.
4. THE RESPONDENT CALLED EVIDENCE TO EXPLAIN THE LAY-OFFS AND THAT EVIDENCE DISCLOSED THAT THE RESPONDENT HAD BEEN ENGAGED IN THE PRODUCTION OF A LARGE ORDER FOR THE UNITED STATES GOVERNMENT AND AS A RESULT OF THIS ORDER THE RESPONDENT'S WORK FORCE HAD SUBSTANTIALLY INCREASED SINCE THE ORDER FOR THE UNITED STATES GOVERNMENT ACCOUNTED FOR APPROXIMATELY TWENTY PER CENT OF THE RESPONDENT'S SALES. BY DECEMBER 1967, THE RESPONDENT EMPLOYED SEVENTY PERSONS AND THIS NUMBER GRADUALLY DECREASED TO SIXTY-SIX BY THE MONTH OF MAY, 1968. IN MAY 1968, THE WORK FORCE WAS FORTY-

THREE PER CENT LARGER THAN IT HAD BEEN ONE YEAR BEFORE.

5. THE RESPONDENT HAD PLACED A BID FOR AN ADDITIONAL CONTRACT WITH THE UNITED STATES GOVERNMENT AND WHEN THE BIDS WERE OPEN IN THE LATTER PART OF FEBRUARY 1968, IT APPEARED THAT THE RESPONDENT WAS ASSURED OF OBTAINING THE ADDITIONAL ORDER FROM THE AMERICAN GOVERNMENT. THE RESPONDENT, THEREFORE, IN ANTICIPATION OF A SECOND ORDER, MAINTAINED ITS WORK FORCE AT SUBSTANTIALLY THE SAME LEVEL FOLLOWING THE COMPLETION OF THE ORIGINAL ORDER FOR THE AMERICAN GOVERNMENT. THE TIME FOR ACCEPTANCE OF THE RESPONDENT'S BID ON THE SECOND ORDER WAS ABOUT TO EXPIRE WHEN THE RESPONDENT RECEIVED A REQUEST FROM THE GOVERNMENT BID SERVICE COMPANY WHICH WAS THE AGENCY IN CHARGE OF THE UNITED STATES GOVERNMENT PROCUREMENT, WHEREIN THE RESPONDENT WAS REQUESTED TO EXTEND THE TIME FOR ACCEPTANCE OF ITS BID. THE RESPONDENT EXTENDED THE BID TIME UNTIL JUNE 15TH, 1968. THE RESPONDENT WAS VERY HOPEFUL OF OBTAINING THE ADDITIONAL CONTRACT WITH THE UNITED STATES GOVERNMENT. HOWEVER, BY LETTER DATED JUNE 4TH, 1968, WHICH WAS RECEIVED BY THE RESPONDENT ON JUNE 5TH, THE RESPONDENT WAS ADVISED THAT THE INVITATION TO BID ON THE CONTRACT WAS CANCELLED. SINCE THE RESPONDENT HAD NOT OBTAINED THE LARGE ORDER THAT IT HAD BEEN HOPING FOR, THE RESPONDENT STATED THAT IT DECIDED TO REDUCE ITS WORK FORCE SINCE THE RESPONDENT HAD FAR TOO MANY EMPLOYEES FOR THE WORK AVAILABLE. THE RESPONDENT THEREFORE PROCEEDED TO LAY OFF EMPLOYEES ON JUNE 5TH AND JUNE 6TH. THE VICE-PRESIDENT OF THE RESPONDENT TESTIFIED THAT THE SOLE REASON FOR THE LAY-OFFS WHICH OCCURRED ON JUNE 5TH AND JUNE 6TH WAS THE FACT THAT THE RESPONDENT DID NOT REQUIRE THE LARGE WORK FORCE WHICH HAD BEEN RETAINED IN ANTICIPATION OF OBTAINING THE SECOND ORDER FOR THE UNITED STATES GOVERNMENT WHICH WAS CANCELLED ON JUNE 4TH, 1968. IT WOULD APPEAR FROM THE EVIDENCE THAT THOSE PERSONS CHOSEN FOR LAY-OFF WERE THE EMPLOYEES WHO ENJOYED THE LEAST SENIORITY, WITH ONE OR TWO EXCEPTIONS.

6. THERE IS NO EVIDENCE BEFORE THE BOARD WHICH WOULD INDICATE THAT THE RESPONDENT HAD ATTEMPTED TO ASCERTAIN WHICH OF THE EMPLOYEES WERE UNION MEMBERS PRIOR TO DETERMINING WHO SHOULD BE LAID OFF.

7. IT IS READILY APPARENT THAT WHEN A LARGE LAY-OFF OCCURS COINCIDENTAL WITH AN APPLICATION FOR CERTIFICATION THAT SUCH AN OCCURRENCE GIVES RISE TO SUSPICION AS TO THE EMPLOYER'S INTENTION IN LAYING OFF THE EMPLOYEES. THIS SUSPICIOUS CIRCUMSTANCE CASTS AN ONUS OF EXPLANATION ON THE EMPLOYER. HOWEVER, AS IN THIS CASE, WHERE THE EMPLOYER IS ABLE TO SATISFACTORILY EXPLAIN THE REASONS FOR THE LAY-OFF AND WHERE THERE IS NO INDICATION THAT THE PERSONS CHOSEN FOR LAY-OFF WERE CHOSEN BECAUSE

OF THEIR SUPPORT FOR THE UNION, IT MUST BE FOUND THAT THE EMPLOYER HAS SATISFIED THE ONUS TO EXPLAIN ITS ACTIONS. IN THIS CASE, THERE WAS NO EVIDENCE OF ACTIVITY BY ANY OF THE RESPONDENT'S OFFICIALS IN OPPOSITION TO THE UNION NOR WAS THERE EVIDENCE WHICH WOULD INDICATE THAT THE RESPONDENT HAD ATTEMPTED TO ASCERTAIN THE IDENTITY OF THE UNION'S SUPPORTERS. ON THE OTHER HAND, THE EVIDENCE DISCLOSED THAT THE RESPONDENT RECALLED A SUBSTANTIAL NUMBER OF THE LAID OFF EMPLOYEES AND HAD OFFERED TO RECALL OTHERS WHO HAD APPARENTLY FOUND OTHER EMPLOYMENT. THE RESPONDENT'S ACTION IN THIS REGARD ARE NOT CONSISTENT WITH AN ATTEMPT TO DEFEAT THE UNION'S ABILITY TO REPRESENT THE RESPONDENT'S EMPLOYEES.

8. HAVING REGARD TO ALL THE EVIDENCE AND THE REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS THAT THE COMPLAINANT HAS FAILED TO ESTABLISH THAT THE AGGRIEVED PERSONS WERE DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 48 OR 50(A) OF THE LABOUR RELATIONS ACT.

9. THE COMPLAINTS ARE THEREFORE DISMISSED.

15207-68-U: MANSFIELD MATHIAS (COMPLAINANT) v. FORD MOTOR CO., AND BOB DARAGON (RESPONDENT).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFE AND F.W. MURRAY.

DECISION OF THE BOARD: NOVEMBER 7, 1968.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. IT APPEARS FROM THE REPORT OF THE FIELD OFFICER THAT THE COMPLAINANT WAS DISCIPLINED BY THE RESPONDENT DARAGON, THE INDUSTRIAL RELATIONS SUPERVISOR OF THE RESPONDENT COMPANY, FOR AN ALLEGED BREACH OF ARTICLE 8.01 OF THE COLLECTIVE AGREEMENT BETWEEN THE COMPANY AND THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, HEREINAFTER REFERRED TO AS THE "U.A.W.". THE COMPLAINANT ALLEGES THAT THIS CONDUCT CONSTITUTES A BREACH OF SECTION 34 OF THE LABOUR RELATIONS ACT AND HE REQUESTS THAT ALL PENALTIES AGAINST HIM BE WITHDRAWN AND THAT HE RECEIVE AN APPROPRIATE APOLOGY. A GRIEVANCE HAS BEEN FILED WITH THE RESPONDENT COMPANY UNDER UNDER THE COLLECTIVE AGREEMENT ON BEHALF OF THE COMPLAINANT.

2. IN UNITED GAS LIMITED, O.L.R.B. MONTHLY REPORT, JANUARY 1963, PAGE 439 AT PAGE 441 THE BOARD SAID:

SECTION 59(2) OF THE ACT MAKES IT ABUNDANTLY CLEAR, HOWEVER, THAT EITHER OF THE PARTIES TO THESE PROCEEDINGS IS ENTITLED TO REFER THE MATTER

WHICH THE COMPLAINANT IS ASKING THIS BOARD TO DECIDE, TO A BOARD OF ARBITRATION AS IF THE COLLECTIVE AGREEMENT UNDER AND BY VIRTUE OF WHICH THE UNION DUES WERE DEDUCTED WAS STILL IN OPERATION. IT IS THE WELL-ESTABLISHED PRACTICE OF THIS BOARD, THAT WHERE THE CONDUCT COMPLAINED OF AS CONSTITUTING A BASIS FOR RELIEF UNDER SECTION 65 OF THE ACT IS PROPERLY THE SUBJECT MATTER OF A GRIEVANCE UNDER A SUBSISTING COLLECTIVE AGREEMENT, THAT AS A GENERAL RULE, THIS BOARD SHOULD DECLINE TO INQUIRE INTO THE GRIEVANCE UNDER SECTION 65 OF THE ACT. THE BOARD'S PRACTICE RECOGNIZES THAT IT IS MORE IN CHARACTER WITH THE FUNCTIONS OF THE COLLECTIVE BARGAINING PROCESS AS ENVISAGED BY THE LEGISLATION IF THE PARTIES TO A GRIEVANCE ARISING UNDER A COLLECTIVE AGREEMENT ARE LEFT TO UTILIZE THE PROCEDURES AND REMEDIES CONTEMPLATED BY THEIR AGREEMENT. IN THIS RESPECT THE PARTIES OUGHT NOT TO BE ALLOWED TO CIRCUMVENT THESE PROCEDURES AND REMEDIES BY THE SIMPLE EXPEDIENT OF SUBMITTING THE GRIEVANCE TO THE LABOUR RELATIONS BOARD IN THE GUISE OF A COMPLAINT UNDER SECTION 65. (SEE, THE NATIONAL SHOWCASE COMPANY CASE, (1960) C.C.H. CANADIAN LABOUR LAW REPORTER, 16,185, C.L.S. 76-715; DOMINION STORES LTD. CASE, BOARD FILE NO. 2858-61-U; WALLACE BARNES COMPANY CASE, (1961) C.C.H. CANADIAN LABOUR LAW REPORTER, 16,198, C.L.S. 76-742; CANADIAN JOHN-MANVILLE COMPANY LIMITED CASE, BOARD FILE NO. 4109-62-U, MONTHLY REPORT, ONTARIO LABOUR RELATIONS BOARD, AUGUST, 1962, P. 173; HEIST INDUSTRIAL SERVICES CASE, BOARD FILE NO. 5048-62-U.)

IN THE PRESENT CASE IT IS CLEAR THAT A GRIEVANCE HAS BEEN LAUNCHED AND, FURTHER, THAT THE RIGHTS OF THE COMPLAINANT WILL DEPEND ON THE INTERPRETATION TO BE PLACED ON THE COLLECTIVE AGREEMENT. IN OTHER WORDS, THIS IS PROPERLY A CASE IN WHICH WE OUGHT TO EXERCISE OUR DISCRETION AND REFUSE TO INQUIRE FURTHER INTO THE COMPLAINT.

3. IN ANY EVENT, WE ARE UNABLE TO FIND THAT THE COMPLAINT MAKES OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED. THE COMPLAINT ALLEGES A VIOLATION OF SECTION 34(2) OF THE ACT. IT IS HIS SUBMISSION THAT THE RESPONDENT COMPANY SHOULD HAVE PROCESSED A GRIEVANCE AGAINST THE U.A.W. WITH RESPECT TO THE COMPLAINANT'S ALLEGED BREACH OF THE COLLECTIVE AGREEMENT BEFORE IMPOSING ANY DISCIPLINE. THERE IS NOTHING IN SECTION 34(2) WHICH REQUIRES THE RESPONDENT COMPANY TO DO THIS. FURTHER, THERE IS NO REASON TO BELIEVE THAT SECTION 34(2) HAS ANY APPLICATION TO THE CASE.

IT ONLY COMES INTO PLAY IF THE AGREEMENT DOES NOT CONTAIN A PROVISION AS IS MENTIONED IN SECTION 34(1). ARTICLES 11 AND 12 OF THE COLLECTIVE AGREEMENT APPEAR TO PROVIDE FOR THE FINAL AND BINDING SETTLEMENT BY ARBITRATION OF ALL DIFFERENCES BETWEEN THE PARTIES. CERTAINLY THE PRESENT GRIEVANCE APPEARS TO BE COVERED BY ARTICLE 11 AND THE COMPLAINANT HAS INVOKED THAT PROCESS.

4. IN THE RESULT, THEN, THE BOARD FINDS THAT THE COMPLAINT DOES NOT MAKE OUT A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND, PURSUANT TO SECTION 46(1) OF THE BOARD'S RULES OF PROCEDURE, THE COMPLAINT IS HEREBY DISMISSED.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

13756-67-R: RETAIL CLERKS INTERNATIONAL ASSOCIATION (APPLICANT)
V. SENTRY DEPARTMENT STORES LIMITED (OPERATING UNDER THE NAME G.E.M.
STORES (1965)) (RESPONDENT). V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
O. HODGES AND H.F. IRWIN.

DECISION OF J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBER
O. HODGES: NOVEMBER 25, 1968.

1. THE RESPONDENT BY ITS LETTER DATED NOVEMBER 19TH, 1968, HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION DATED OCTOBER 28TH, 1968 IN THIS MATTER ON THE GROUNDS THAT "THE BOARD HAS INCORRECTLY AND UNJUSTLY PUT THE ONUS ON MRS. COWHERD TO SATISFY THE BOARD CONCERNING THE ORIGINATION OF THE FIRST DOCUMENT". COUNSEL FOR THE RESPONDENT FURTHER STATED THAT "IN OUR RESPECTFUL OPINION SINCE THE INQUIRY WAS THE BOARD'S INQUIRY, AND SINCE MRS. COWHERD TESTIFIED THAT SHE DID NOT KNOW THE PARTICULARS OF THE ORIGINATION OF THE FIRST DOCUMENT, THE ONUS WAS UPON THE BOARD TO SUBPOENA WITNESSES TO TESTIFY CONCERNING THE ORIGINAL DOCUMENT IF IT FELT THAT INQUIRY INTO THIS DOCUMENT WAS STILL NECESSARY."

2. THE BOARD'S PROCEDURE IN CASES WHERE EMPLOYEES HAVE FILED STATEMENTS OF OBJECTION IN OPPOSITION TO AN APPLICATION FOR CERTIFICATION IS TO PUT QUESTIONS TO WITNESSES WHO APPEAR IN SUPPORT OF THE PETITION CONCERNING THEIR KNOWLEDGE AND OBSERVATION AS TO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED. AFTER THE BOARD HAS ASKED CERTAIN QUESTIONS IN THIS REGARD, COUNSEL FOR EACH OF THE PARTIES IS GIVEN AN OPPORTUNITY TO SUGGEST ADDITIONAL QUESTIONS WHICH ARE ASKED BY THE BOARD. THE BOARD DOES NOT PERMIT DIRECT EXAMINATION OR CROSS-EXAMINATION OF THE WITNESSES WHO TESTIFY

IN SUPPORT OF A PETITION IN ORDER TO GIVE EFFECT TO SECTION 83 OF THE LABOUR RELATIONS ACT BY DOING EVERYTHING POSSIBLE TO PROTECT THE IDENTITY OF THE PERSONS WHO SIGNED THE PETITION. THE BOARD CONDUCTS THE INQUIRY AS A PROCEDURAL MATTER TO GIVE THE PROTECTION AFFORDED BY SECTION 83. HOWEVER, THE BOARD DOES NOT ASSUME AN ONUS OF PROOF ON BEHALF OF ONE OF THE PARTIES TO THE PROCEEDING. THE ONUS OF SATISFYING THE BOARD CONCERNING THE ORIGATION AND CIRCULATION OF THE PETITION RESTS UPON THE EMPLOYEES WHO HAVE FILED THE STATEMENT OF OBJECTION. IN ADDITION, THE ONUS OF MAKING ALL THE WITNESSES AVAILABLE WHO MAY HAVE INFORMATION CONCERNING THE ORIGATION AND CIRCULATION OF THE PETITION ALSO RESTS UPON THE OBJECTING EMPLOYEES. PARAGRAPH 8 OF FORM 5, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING, READS AS FOLLOWS:

8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.*

*EXPLANATORY NOTE: WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED IN PARAGRAPH 8 ABOVE, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

3. THE BOARD'S DIRECTION TO EMPLOYEES CONTAINED IN FORM 5 MAKES IT PERFECTLY CLEAR THAT THE ONUS IS ON THE OBJECTING EMPLOYEES TO PRODUCE THE WITNESSES WHO CAN SATISFY THE BOARD AS TO THE CIRCUMSTANCES CONCERNING THE ORIGATION OF THE MATERIAL FILED. IN THE INSTANT CASE, THE BOARD FOUND THAT THE STATEMENT OF DESIRE WHICH WAS FILED IN THIS MATTER FLOWED DIRECTLY FROM AN EARLIER STATEMENT OF DESIRE WHICH HAD BEEN PREPARED BY COUNSEL FOR THE OBJECTORS ON THE INSTRUCTIONS OF ANOTHER PERSON OR PERSONS.

FOR THE REASONS SET FORTH IN THE BOARD'S DECISION OF OCTOBER 28TH, THE BOARD FOUND THAT THE PETITION BEFORE THE BOARD WAS SO INTIMATELY CONNECTED WITH THE FIRST DOCUMENT THAT THE BOARD HAD TO BE SATISFIED CONCERNING THE ORIGINATION OF THE FIRST DOCUMENT BEFORE EFFECT COULD BE GIVEN TO THE SECOND DOCUMENT WHICH WAS FILED IN THIS MATTER.

4. FOR THE ABOVE REASONS AND FOR THE REASONS SET FORTH IN THE BOARD'S DECISION OF OCTOBER 28TH, 1968, THE BOARD WAS NOT SATISFIED CONCERNING THE ORIGINATION OF THE DOCUMENT FILED IN OPPOSITION TO THIS APPLICATION AND SINCE THE ONUS WAS ON THE OBJECTING EMPLOYEES TO SATISFY THE BOARD IN THIS REGARD, WE ARE NOT PREPARED TO HOLD THAT THE DOCUMENT CASTS DOUBT ON THE MEMBERSHIP EVIDENCE FILED BY THE APPLICANT IN THIS CASE.

5. THE RESPONDENT HAS NOT ALLEGED THAT NEW EVIDENCE IS NOW AVAILABLE WHICH WAS NOT AVAILABLE AT THE HEARING IN THIS MATTER.

6. THE BOARD CONSIDERED ALL THE ISSUES RAISED BY THE RESPONDENT IN ITS LETTER DATED NOVEMBER 19TH, 1968, PRIOR TO ARRIVING AT ITS DECISION OF OCTOBER 28TH, 1968.

7. FOR THESE REASONS, THE BOARD DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF OCTOBER 28TH, 1968, AS REQUESTED BY THE RESPONDENT.

DECISION OF BOARD MEMBER H.F. IRWIN: NOVEMBER 25, 1968.

THE RESPONDENT HAS DIRECTED ITS REQUEST FOR REVIEW TO THE DECISION OF THE MAJORITY IN THIS MATTER. MY DISSENT DATED OCTOBER 28TH, 1968 SPEAKS FOR ITSELF AND I WOULD HAVE GRANTED THE RESPONDENT'S REQUEST.

14347-67-R: THE LAKEHEAD REGISTERED NURSING ASSISTANTS BARGAINING ASSOCIATION (APPLICANT) V. ST. JOSEPH'S GENERAL HOSPITAL (RESPONDENT) BUILDING SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 268 (INTERVENER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFE.

DECISION OF J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBER H.F. IRWIN: NOVEMBER 1, 1968.

1. BY LETTER DATED OCTOBER 21ST, 1968, COUNSEL FOR THE INTERVENER REQUESTS THAT THE BOARD RECONSIDER ITS DECISION DATED SEPTEMBER 26TH, 1968. MORE PARTICULARLY, COUNSEL REQUESTS THAT THE BOARD RECONSIDER ITS FINDINGS AS CONTAINED IN PARAGRAPH 16 OF THE DECISION WHICH READS AS FOLLOWS:

LET US NOW LOOK AT THE APPLICABILITY OF SECTION 45A OF THE ACT TO THE INSTANT SITUATION. THE INTERVENER AND THE HOSPITALS HAVE BEEN PARTIES TO A SERIES OF COLLECTIVE AGREEMENTS OVER A PERIOD OF MANY YEARS. THE RESPONDENT HOSPITALS, HOWEVER, ONLY VOLUNTARILY RECOGNIZED THE INTERVENER AS BARGAINING AGENT FOR THE REGISTERED NURSING ASSISTANTS FOR THE FIRST TIME DURING THE NEGOTIATIONS FOR THE CURRENT COLLECTIVE AGREEMENTS. WE SEE NO REAL DISTINCTION BETWEEN THE INCORPORATION OF THIS CLASSIFICATION OF EMPLOYEES INTO THE BARGAINING UNITS COVERED BY THE RENEWED COLLECTIVE AGREEMENTS THAT WERE EXECUTED ON FEBRUARY 13TH OF THIS YEAR AND THE VOLUNTARY RECOGNITION OF THE INTERVENER AS BARGAINING AGENT FOR UNITS COMPOSED SOLELY OF REGISTERED NURSING ASSISTANTS AND THE SUBSEQUENT ENTERING INTO SEPARATE COLLECTIVE AGREEMENTS COVERING THESE EMPLOYEES. IN EFFECT THEN, THE CURRENT COLLECTIVE AGREEMENTS BETWEEN THE INTERVENER AND THE HOSPITALS ARE FIRST AGREEMENTS AS THEY RELATE TO THE REGISTERED NURSING ASSISTANTS. THIS BEING SO, SECTION 45A IS AVAILABLE TO THE APPLICANT WHO IS CHALLENGING THE RIGHT OF THE INTERVENER TO REPRESENT THE REGISTERED NURSING ASSISTANTS. IN VIEW OF THE BOARD'S FINDING THAT AT THE TIME THE CURRENT COLLECTIVE AGREEMENTS WERE ENTERED INTO THE INTERVENER REPRESENTED NONE OF THE REGISTERED NURSING ASSISTANTS AT THE THREE HOSPITALS, THE BOARD, PURSUANT TO SECTION 45A OF THE ACT, DECLARES THAT THE INTERVENER, AT THE RELEVANT TIME, WAS NOT ENTITLED TO REPRESENT THE REGISTERED NURSING ASSISTANTS IN THE EMPLOY OF THE RESPONDENT HOSPITALS. ACCORDINGLY, THE COLLECTIVE AGREEMENTS EXECUTED ON FEBRUARY 13TH, 1968 ARE VOID WITH RESPECT TO THE REGISTERED NURSING ASSISTANTS AND ARE NOT A BAR TO THE INSTANT APPLICATIONS FOR CERTIFICATION OF THE APPLICANT. WE WOULD ADD THAT SINCE THAT ACTION OF THE APPLICANT AND THE HOSPITALS IN RELATION TO THE REGISTERED NURSING ASSISTANTS WAS TANTAMOUNT TO ENTERING INTO A FIRST AGREEMENT COVERING THIS CLASSIFICATION OF EMPLOYEES, THE ABOVE FINDING IS CONSISTENT WITH THE PROVISIONS OF SECTION 45A(4) OF THE ACT. (SEE ESSEX HEALTH ASSOCIATION CASE, O.L.R.B. MONTHLY REPORT, JANUARY 1968, P. 974.)

2. COUNSEL FOR THE INTERVENER MADE THE FOLLOWING SUBMISSIONS IN SUPPORT OF HIS REQUEST:

1. THE ABOVE DECLARATION UNDER SECTION 45A CONTAINED IN PARAGRAPH 16 OF ITS DECISION WAS NOT NECESSARY TO THE

DISPOSITION OF THE MATTER BEFORE IT AND IS SEVERABLE FROM IT. IN FACT, THE OPERATION OF 45A OF THE ACT IS DEPENDENT ON AN APPLICATION OF AN EMPLOYEE OR TRADE UNION AND ACCORDING TO THE RULES OF PROCEDURE AND REGULATIONS OF THE BOARD (SEE RULE 12) MUST BE MADE ON FORM 13. THIS FORM SPECIFICALLY REFERS TO AN APPLICATION UNDER 45A. IN THE INSTANT CASE, NO SUCH APPLICATION WAS MADE BY ANY PARTY TO THE PROCEEDINGS. IN PURPORTING TO MAKE SUCH A DECLARATION THE BOARD HEREBY EXCEEDED ITS JURISDICTION. TO ANALOGIZE, THE BOARD CANNOT DECIDE AN APPLICATION FOR CERTIFICATION WHERE NO APPLICATION HAS BEEN FILED. NOR CAN IT, IN AN APPLICATION FOR CERTIFICATION, DECLARE UNDER SECTION 45A WHERE NO SUCH APPLICATION IS BEFORE IT, AND PARTICULARLY WHERE NO DECLARATION IS NECESSARY TO ITS DISPOSITION OF THE CERTIFICATION MATTER. SECTION 45A(4) IS, IN ANY EVENT, DEPENDENT ON 45A(1) WHICH REQUIRES AN APPLICATION BEFORE THE BOARD CAN EXERCISE ITS JURISDICTION.

2. IN THE ALTERNATIVE, THE MAJORITY OF THE BOARD EXCEEDED ITS JURISDICTION IN MAKING THE DECLARATION QUOTED ABOVE IN THAT SECTION 45A IS APPLICABLE ONLY WHERE A TRADE UNION HAS NOT CERTIFIED AS A BARGAINING AGENT FOR A BARGAINING UNIT OF EMPLOYEES. THE INTERVENER WAS CLEARLY CERTIFIED FOR NURSING ASSISTANTS AT BOTH THE ST. JOSEPH'S GENERAL HOSPITAL AND THE GENERAL HOSPITAL OF PORT ARTHUR AND THAT THESE PERSONS WERE KNOWN AS "CERTIFIED NURSING ASSISTANTS" IN 1951, AT THE TIME OF THE CERTIFICATES. IT IS NOT DISPUTED THAT THIS TITLE WAS CHANGED TO REGISTERED NURSING ASSISTANTS. UNDER THESE CIRCUMSTANCES, THE INTERVENER SUBMITS THE BOARD EXCEEDED ITS JURISDICTION IN MAKING A DECLARATION UNDER THE SECTION.
3. IN THE ALTERNATIVE, THE INTERVENER SUBMITS THAT THE BOARD EXCEEDED ITS JURISDICTION IN MAKING SUCH A DECLARATION BECAUSE SUCH DECLARATION CAN ONLY BE MADE WITHIN THE PERIOD OF THE FIRST YEAR "THAT THE FIRST COLLECTIVE AGREEMENT BETWEEN THEM IS IN OPERATION". IT WILL BE CLEAR FROM THE FACTS THAT THE PARTIES HAD ENTERED INTO A SERIES OF COLLECTIVE AGREEMENTS FROM 1951 UP TO AND INCLUDING THE ONE OF FEBRUARY 13TH, 1968.

3. WITH REFERENCE TO PARAGRAPH 1 OF COUNSEL'S LETTER, WE WOULD POINT OUT THAT IT WAS COUNSEL FOR THE INTERVENER WHO RAISED THE ISSUE OF THE APPLICABILITY OF SECTION 45A OF THE ACT AT THE HEARING OF THE INSTANT APPLICATION. AT NO TIME DID HE SUGGEST THAT THE BOARD WAS WITHOUT JURISDICTION TO MAKE A DETERMINATION WITH RESPECT TO SECTION 45A IN THE ABSENCE OF A SEPARATE APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS MADE UNDER THAT SECTION. THE BOARD ACCORDINGLY ENTER-TAINED FULL ARGUMENT AS TO THE EFFECT OF THE SECTION AND MADE ITS DETERMINATION BASED ON THE ARGUMENT IN PARAGRAPH 16 OF ITS DECISION OF SEPTEMBER 26TH. FURTHER, A DETERMINATION ON THIS ISSUE WITH WHICH THE BOARD WAS CONFRONTED IS BOTH DESIRABLE AND NECESSARY TO THE DECISION. IN ANY EVENT, THE BOARD DOES NOT ACCEPT THE SUBMISSION OF COUNSEL THAT A SEPARATE APPLICATION MUST BE MADE UNDER SECTION 45A BEFORE THE BOARD CAN CON-SIDER THE SECTION IN A CERTIFICATION APPLICATION, PARTICULARLY IN THE LIGHT OF THE MATTERS RAISED IN THE INSTANT APPLICATION (SEE ROTOR ELECTRIC COMPANY CASE, O.L.R.B. MONTHLY REPORT, AUGUST 1965, P. 365). THE BOARD HAS ALREADY DEALT WITH SECTION 45A(4) IN PARAGRAPH 16 OF ITS DECISION DATED SEPTEMBER 26TH, 1968.

4. WITH RESPECT TO THE ALTERNATIVE SUBMISSIONS OF COUNSEL CONTAINED IN PARAGRAPH 2 OF HIS LETTER, WE DO NOT DISPUTE THE STATEMENT THAT THE INTERVENER WAS CERTIFIED IN 1951 AS BARGAINING AGENT FOR THE OCCUPATIONAL CLASSIFICATIONS OF WHAT IS NOW KNOWN AS REGISTERED NURSING ASSISTANTS AT ST. JOSEPH'S GENERAL HOSPITAL AND THE GENERAL HOSPITAL OF PORT ARTHUR. WE WOULD POINT OUT, HOWEVER, THAT IN NONE OF THE COLLECTIVE AGREEMENTS NEGOTIATED WITH THE HOSPITALS, PRIOR TO THE CURRENT COLLECTIVE AGREEMENTS, DID THE INTERVENER EVEN PURPORT TO BARGAIN ON BEHALF OF THE REGISTERED NURSING ASSISTANTS.

5. THE FURTHER ALTERNATIVE SUBMISSION OF COUNSEL CONTAINED IN PARAGRAPH 3 OF HIS LETTER HAS BEEN DEALT WITH BY THE BOARD IN ITS DECISION OF SEPTEMBER 26TH, 1968.

6. HAVING REGARD TO ALL THE ARGUMENTS ADVANCED BY COUNSEL IN HIS LETTER OF OCTOBER 21ST, 1968, WE REJECT HIS SUBMISSIONS THAT THE BOARD EXCEEDED ITS JURISDICTION. FURTHER, THE BOARD FINDS NO REASON NOR DOES IT DEEM IT ADVISABLE TO VARY OR REVOKE ANY PART OF ITS DECISION OF SEPTEMBER 26TH, 1968.

7. THE REQUEST OF THE INTERVENER, ACCORDINGLY, IS DENIED.

THE REQUEST FOR RECONSIDERATION OF THE BOARD'S DECISION OF SEPTEMBER 26TH, 1968 IS DIRECTED TOWARD THE DECISION OF THE MAJORITY. ACCORDINGLY, I DO NOT FEEL CALLED UPON TO COMMENT FURTHER EXCEPT TO REFER TO MY MINORITY DECISION OF THE SAME DATE.

14678-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF PETERBOROUGH (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS O. HODGES AND H.F. IRWIN.

DECISION OF THE BOARD: NOVEMBER 6, 1968.

1. BY LETTER DATED OCTOBER 22, 1968 THE RESPONDENT HAS APPLIED TO THE BOARD TO RE-HEAR THE APPLICATION MADE BY THE APPLICANT IN ORDER TO PERMIT THE RESPONDENT "TO SUBMIT EVIDENTIAL PROOF" OF A COLLECTIVE AGREEMENT. THE HISTORY OF THIS MATTER IS SET OUT IN PARAGRAPHS 2 TO 5 OF THE BOARD'S DECISION IN THIS CASE, DATED OCTOBER 10, 1968. THIS IS THE SECOND REQUEST TO RE-CONSIDER OUR ORIGINAL RULING.
2. IN SUPPORT OF ITS REQUEST THE RESPONDENT MAKES TWO STATEMENTS WHICH REQUIRE COMMENT. THE FIRST IS THAT THE BOARD FOUND THE CARETAKERS AND MAINTENANCE ASSOCIATION TO BE A TRADE UNION WITHIN THE MEANING OF THE ACT. THE BOARD IN ITS DECISION OF OCTOBER 10, 1968 WAS VERY CAREFUL NOT TO MAKE SUCH A FINDING. THE LANGUAGE IN PARAGRAPHS 6 AND 14 IS QUALIFIED BY THE WORD "APPEAR" OR "APPEARS". AGAIN IT IS CLEAR FROM PARAGRAPH 6 THAT THE BOARD WAS LOOKING ONLY AT THE CONSTITUTION OF THE ASSOCIATION, AND IN DECIDING WHETHER SUCH A GROUP IS A TRADE UNION WITHIN THE MEANING OF THE LABOUR RELATIONS ACT THE BOARD MAY REQUIRE EVIDENCE OF OTHER MATTERS, FOR EXAMPLE, THE EVENTS LEADING UP TO ITS FORMATION AND ITS RELATIONSHIP WITH THE RESPONDENT.
3. THE RESPONDENT ALSO SUGGESTS THAT THE BOARD FOUND THERE WAS IN EXISTENCE "AN AGREEMENT" BUT THAT ITS TERMS HAD NOT BEEN PROVED. HOWEVER, PARAGRAPH 14 OF THE DECISION PLAINLY STATES "ALTHOUGH NO AGREEMENT WAS IN FACT PROVED". IF THE AGREEMENT WAS NOT PROVED THE BOARD COULD NOT HAVE FOUND THAT IT WAS IN EXISTENCE.
4. IT SHOULD PERHAPS BE POINTED OUT THAT THE EVIDENCE CONCERNING BOTH THESE MATTERS RAISED BY THE RESPONDENT IN ITS REQUEST TO RE-OPEN THE APPLICATION WAS ADDUCED AT THE FIRST HEARING OF THIS CASE WHICH THE RESPONDENT CHOSE NOT TO ATTEND.

5. THE OTHER MATTERS SET OUT IN THE RESPONDENT'S LETTER OF OCTOBER 22ND WERE THE SUBJECT OF ARGUMENT BY THE RESPONDENT AT THE SECOND HEARING IN THIS CASE AND WERE FULLY CONSIDERED BY THE BOARD IN ITS DECISION REFERRED TO ABOVE.

6. HAVING REGARD TO THE ABOVE CONSIDERATIONS AND TO ALL THE CIRCUMSTANCES SURROUNDING THIS MATTER, THE REQUEST OF THE RESPONDENT IS DENIED.

7. THE PARTIES ARE DIRECTED TO MEET FORTHWITH IN COMPLIANCE WITH THE EARLIER INSTRUCTIONS OF THE REGISTRAR IN ORDER TO MAKE THE NECESSARY ARRANGEMENTS FOR THE TAKING OF THE REPRESENTATION VOTE DIRECTED BY THE BOARD IN ITS DECISION DATED OCTOBER 10, 1968.

EXCERPT FROM DECISION IN CONSTRUCTION INDUSTRY CASE

15260-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) V. MASTER CRAFT BRIDGE AND ENGINEERING LTD. (RESPONDENT).

8. IT IS THE PRACTICE OF THE BOARD TO HOLD A HEARING IN CERTIFICATION CASES EXCEPT THOSE FALLING WITHIN THE CONSTRUCTION INDUSTRY PROVISIONS OF THE LABOUR RELATIONS ACT. ON SUCH HEARINGS THE BOARD WILL MAKE INQUIRIES CONCERNING DEFECTS IN MEMBERSHIP EVIDENCE, SUCH AS THE OMISSION OF A DATE ON A CARD OR THE AMOUNT PAID. HEARINGS SELDOM TAKE PLACE IN CONSTRUCTION INDUSTRY CASES AND WHERE DEFECTS OCCUR IN THE MEMBERSHIP EVIDENCE, THE BOARD MUST EITHER LIST THE MATTER FOR A HEARING OR SEND OUT AN OFFICER TO MAKE AN INVESTIGATION. IN THIS CASE, THE LATTER COURSE WAS FOLLOWED BECAUSE ONE OF THE CERTIFICATES OF MEMBERSHIP FILED BY THE APPLICANT WAS NOT PROPERLY COMPLETED. THE BOARD DESIRES TO EMPHASIZE ONCE AGAIN THAT REPRESENTATIVES OF TRADE UNIONS SHOULD TAKE CARE TO ENSURE THAT THEIR CARDS AND RECEIPTS ARE PROPERLY AND COMPLETELY FILLED OUT IF THEY WISH TO AVOID DELAY IN THE PROCESSING OF AN APPLICATION. SEE R. G. BALL LIMITED CASE (BOARD FILE No. 13899-67-R).

9. WITH RESPECT TO MATTERS RAISED IN PARAGRAPH 13 OF THE RESPONDENT'S REPLY, THESE ARE NOT MATTERS WHICH THE BOARD NORMALLY TAKES INTO CONSIDERATION IN DECIDING WHETHER TO ISSUE A CERTIFICATE OR NOT. SEE, FOR EXAMPLE, TRAUGOTT CONSTRUCTION LIMITED CASE O.L. R.B. MONTHLY REPORT, FEBRUARY, 1967, P. 920, WHERE THE BOARD SAID:

"WITH RESPECT TO THE MATTERS RAISED IN THE RESPONDENT'S REPLY, IT IS POINTED OUT THAT THE FACT THAT A PROJECT AFFECTED BY THE APPLICATION WILL BE COMPLETED

SHORTLY, THAT NO FURTHER PROJECTS ARE PLANNED FOR THE AREA AND THAT THE RESPONDENT WILL NOT HAVE EMPLOYEES WORKING IN THE AREA ARE NOT MATTERS THAT THE BOARD NORMALLY CONSIDERS IN DECIDING WHETHER A CERTIFICATE SHOULD ISSUE TO THE APPLICANT. THE QUESTION IS WHETHER THERE WERE EMPLOYEES IN THE BARGAINING UNIT ON THE DATE OF THE MAKING OF THE APPLICATION. SEE SECTION 7 OF THE LABOUR RELATIONS ACT, AND ATCO INDUSTRIES LTD., O.L.R.B. MONTHLY REPORT, MARCH, 1966, P. 905 AND MOLLENHAUER CONTRACTING COMPANY LIMITED CASE, BOARD FILE NO. 11414-65-R."

WE SEE NO REASON FOR DEPARTING FROM THIS POLICY IN THIS CASE AND ACCORDINGLY A CERTIFICATE WILL ISSUE TO THE APPLICANT.

(NOVEMBER 12, 1968).

STATISTICAL TABLES FOR NOVEMBER 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER FILED		
	NOVEMBER 1968	1ST 8 MONTHS OF 1968-69	FISCAL YEAR 1967-68
I. CERTIFICATION	77	691	661
II. DECLARATION TERMINATING BARGAINING RIGHTS	5	41	61
III. DECLARATION OF SUCCESSOR STATUS	-	10	13
IV. DECLARATION THAT STRIKE UNLAWFUL	3	30	30
V. DECLARATION THAT LOCK- OUT UNLAWFUL	1	5	12
VI. CONSENT TO PROSECUTE	20	79	79
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	11	122	126
VIII. MISCELLANEOUS	<u>2</u>	<u>40</u>	<u>55</u>
TOTAL	<u>119</u>	<u>1018</u>	<u>1037</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER		
	NOVEMBER 1968	1ST 8 MONTHS OF 1968-69	FISCAL YEAR 1967-68
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD	93	716	611

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR

RELATIONS BOARD BY MAJOR TYPES

	NUMBER FILED		
	NOVEMBER 1968	1ST 8 MONTHS OF 1968-69	FISCAL YEAR 1967-68
I. CERTIFICATION	87	716	658
II. DECLARATION TERMINATING BARGAINING RIGHTS	5	38	52
III. DECLARATION OF SUCCESSOR STATUS	-	13	12
IV. DECLARATION THAT STRIKE UNLAWFUL	3	30	30
V. DECLARATION THAT LOCK-OUT UNLAWFUL	1	4	12
VI. CONSENT TO PROSECUTE	12	69	80
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	13	135	125
VIII. MISCELLANEOUS	-	35	53
TOTAL	<u>121</u>	<u>1040</u>	<u>1022</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY TYPE AND DISPOSITION

	<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
	<u>NOVEMBER 1ST 8 MTHS FISCAL YR.</u> <u>1968</u>	<u>1968-69</u>	<u>1967-68</u>	<u>NOVEMBER 1ST 8 MTHS FISCAL YR.</u> <u>1968</u>	<u>1968-69</u>	<u>1967-68</u>
<u>I. CERTIFICATION</u>						
GRANTED	63	490	467	2188	16140	15871
DISMISSED	13	161	140	916	5439	9303
WITHDRAWN	<u>11</u>	<u>65</u>	<u>51</u>	<u>144</u>	<u>1089</u>	<u>1168</u>
TOTAL	<u>87</u>	<u>716</u>	<u>658</u>	<u>3248</u>	<u>22668</u>	<u>26342</u>
 <u>II. TERMINATION</u>						
<u>OF BARGAINING</u>						
<u>RIGHTS</u>						
GRANTED	3	21	22	104	509	347
DISMISSED	1	13	28	365	513	867
WITHDRAWN	<u>1</u>	<u>4</u>	<u>2</u>	<u>50</u>	<u>108</u>	<u>1</u>
TOTAL	<u>5</u>	<u>38</u>	<u>52</u>	<u>519</u>	<u>1130</u>	<u>1215</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>NOVEMBER</u>	<u>1ST 8 MONTHS</u>	<u>FISCAL YR.</u>
		<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	1	2
	DISMISSED	-	2	3
	WITHDRAWN	<u>3</u>	<u>27</u>	<u>25</u>
	TOTAL	<u>3</u>	<u>30</u>	<u>30</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	1	2	1
	WITHDRAWN	<u>-</u>	<u>2</u>	<u>11</u>
	TOTAL	<u>1</u>	<u>4</u>	<u>12</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	2	11	5
	DISMISSED	3	12	8
	WITHDRAWN	<u>7</u>	<u>46</u>	<u>67</u>
	TOTAL	<u>12</u>	<u>69</u>	<u>80</u>
VI.	<u>COMPLAINT OF UNFAIR</u>			
	<u>PRACTICE IN EMPLOYMENT</u>			
	<u>(SECTION 65)</u>			
	GRANTED	-	7	2
	DISMISSED	5	33	13
	WITHDRAWN	<u>8</u>	<u>95</u>	<u>23</u>
	TOTAL	<u>13</u>	<u>135</u>	<u>38</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	NOVEMBER 1968	1ST 8 MTHS 1968-69	FISCAL YR. 1967-68
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	1	12	11
POST-HEARING VOTE	6	34	29
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	-	2	9
POST-HEARING VOTE	4	23	27
BALLOTS NOT COUNTED	-	1	3
TOTAL	<u>11</u>	<u>72</u>	<u>79</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY
THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	NOVEMBER 1968	1ST 8 MTHS 1968-69	FISCAL YR. 1967-68
*RESPONDENT UNION SUCCESSFUL	-	-	1
RESPONDENT UNION UNSUCCESSFUL	<u>3</u>	<u>14</u>	<u>11</u>
TOTAL	<u>3</u>	<u>14</u>	<u>12</u>

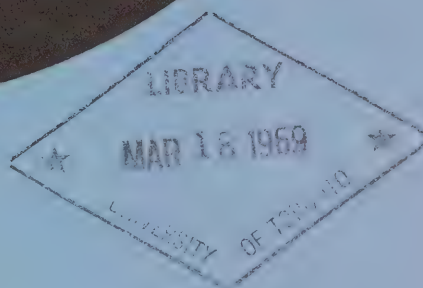
*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

DURING DECEMBER 1968

BARGAINING AGENTS CERTIFIED DURING OCTOBER

NO VOTE CONDUCTED

14720-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD OF EDUCATION FOR THE CITY OF CHATHAM (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN CUSTODIAL OR MAINTENANCE DUTIES EMPLOYED IN THE PUBLIC SCHOOL SYSTEM WITHIN THE CORPORATE LIMITS OF THE CITY OF CHATHAM, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR AND OFFICE STAFF." (61 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15198-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SOUTH EAST NORFOLK DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF SOUTH EAST NORFOLK DISTRICT HIGH SCHOOL BOARD ENGAGED IN MAINTENANCE SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (19 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 894).

15228-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (APPLICANT) V. THE GEORGE TAYLOR HARDWARE LIMITED (RESPONDENT).

UNIT: "ALL OFFICE AND CLERICAL EMPLOYEES OF THE RESPONDENT AT SUDBURY, SAVE AND EXCEPT ASSISTANT OFFICE MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT OFFICE MANAGER, SECRETARY TO THE MANAGER AND SALES STAFF." (9 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15243-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. FISHER GOVERNOR COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOTMORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STUDENTS EMPLOYED IN

CONNECTION WITH A UNIVERSITY CO-OPERATIVE TRAINING PROGRAM."
(173 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PLANT INDUSTRIAL ENGINEERING STAFF AND TOOL DRAFTSMEN ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

(SEE INDEXED ENDORSEMENT PAGE 905).

15254-68-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) V. INLAND PUBLISHING CO., LIMITED (RESPONDENT) V. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS LOCAL #28 (INTERVENER).

UNIT: "ALL PHOTOLITHOGRAPHIC OFFSET PRESSMEN, THEIR APPRENTICES, FEEDERS AND HELPERS AND ALL PHOTOLITHOGRAPHIC OFFSET CAMERAMEN, PLATEMAKERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF CHINGUACOUSY IN THE COUNTY OF PEEL SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (18 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 910).

15257-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE PUBLIC SCHOOL BOARD OF THE TOWNSHIP SCHOOL AREA OF THE TOWNSHIP OF DUNWICH (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF." (8 EMPLOYEES IN THE UNIT).

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT WORKING FOREMEN ARE INCLUDED IN THE BARGAINING UNIT.

15276-68-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. WM. FINKLE MACHINE LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (INTERVENER #2).

UNIT #1: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS SHOP AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF." (2 EMPLOYEES IN THE UNIT).

UNIT #2: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF PREFABRICATED STEEL IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY

IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

(SEE INDEXED ENDORSEMENT PAGE 911).

15324-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. ESSEX DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15326-68-R: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. FERROX IRON LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (23 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15329-68-R: AMALGAMATED MEAT CUTTERS & BUTCHER WORKMEN OF NORTH AMERICA (A.F.L. C.I.O. C.L.C.) (APPLICANT) V. CRABTREE MEAT PACKERS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT OTTAWA, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK." (23 EMPLOYEES IN THE UNIT).

15343-68-R: OFFICE & PROFESSIONAL EMPLOYEES INTERNATIONAL UNION LOCAL 131 AFL-CIO (APPLICANT) V. PUROLATOR PRODUCTS (CANADA) LIMITED (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT AT THE TOWN OF MISSISSAUGA, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, PERSONNEL ASSISTANT, SALESMEN, ONE SECRETARY TO THE PRESIDENT, ONE SECRETARY TO THE GENERAL MANAGER, DRAFTSMEN, LABORATORY TECHNICIANS, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD AND STUDENTS EMPLOYED UNDER A CO-OPERATIVE TRAINING PROGRAM." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15344-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) (APPLICANT) V. LORENCE PRODUCTS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT WINDSOR, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (46 EMPLOYEES IN THE UNIT).

15351-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. NORTH ESSEX DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT THE BUSINESS ADMINISTRATOR AND SECRETARY-TREASURER, AND PERSONS ABOVE THE RANK OF BUSINESS ADMINISTRATOR AND SECRETARY-TREASURER." (11 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15361-68-R: WAREHOUSEMEN AND MISCELLANEOUS DRIVERS UNION, LOCAL 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. CRYSTALL GLASS AND PLASTICS LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (8 EMPLOYEES IN THE UNIT).

15365-68-R: GENERAL TRUCK DRIVERS' UNION, LOCAL 938 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. SQUARE DEAL CARTAGE LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (22 EMPLOYEES IN THE UNIT).

15366-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) V. CANADIAN SEATING CO. LTD. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15371-68-R: BRICKLAYERS, MASONS AND PLASTERERS' INTERNATIONAL UNION OF AMERICA (APPLICANT) V. WOLFOND CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL BRICKLAYERS AND BRICKLAYERS' APPRENTICES, STONEMASONS AND STONEMASONS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15372-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. FLINT MANUFACTURING & SALES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE AUTOMATIC PLASTICS COMPANY DIVISION OF THE RESPONDENT IN METROPOLITAN TORONTO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (58 EMPLOYEES IN THE UNIT).

15378-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. C. A. PITTS CONSTRUCTION (ONTARIO) LIMITED, McNAMARA CORPORATION LIMITED AND ATLAS CONSTRUCTION CO LIMITED (JOINT VENTURE) (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF SOUTH LORRAINE IN THE DISTRICT OF TEMISKAMING AND THE MUNICIPALITIES IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (9 EMPLOYEES IN THE UNIT).

15379-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. C. A. PITTS CONSTRUCTION (ONTARIO) LIMITED, McNAMARA CORPORATION LIMITED AND ATLAS CONSTRUCTION CO LIMITED (JOINT VENTURE) (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF SOUTH LORRAINE IN THE DISTRICT OF TEMISKAMING AND THE MUNICIPALITIES IMMEDIATELY ADJACENT THERETO, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (53 EMPLOYEES IN THE UNIT).

15380-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL 880 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. THE CORPORATION OF THE TOWNSHIP OF MERSEA (RESPONDENT).

UNIT: "ALL EMPLOYEES EMPLOYED BY THE RESPONDENT IN ITS ROAD DEPARTMENT, SAVE AND EXCEPT SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT AND PERSONS ABOVE THE RANK OF SUPERINTENDENT, AND OFFICE STAFF." (3 EMPLOYEES IN THE UNIT).

15384-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. CONTINENTAL CAN COMPANY OF CANADA LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT 25 CHALLENGE ROAD, IN THE BOROUGH OF ETOBICOKE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE FACT THAT THE RESPONDENT HAS MORE THAN ONE LOCATION IN THE MUNICIPALITY OF METROPOLITAN TORONTO AND HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

15385-68-R: GENERAL TRUCK DRIVERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ROTHSAI CONCENTRATES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF ITS PLANTS AND PREMISES AT ELMIRA IN THE COUNTY OF WATERLOO AND ROTHSAI IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (24 EMPLOYEES IN THE UNIT).

(HAVING REGARD TO THE AGREEMENT OF THE PARTIES).

(SEE INDEXED ENDORSEMENT PAGE 918).

15391-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. RULIFF GRASS CONSTRUCTION Co. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15392-68-R: LOCAL #28. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS (APPLICANT) V. INLAND PUBLISHING Co. LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES IN THE BINDERY AND MAILING DEPARTMENT OF THE RESPONDENT IN THE TOWNSHIP OF CHINGUACOUSY IN THE COUNTY OF PEEL SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (6 EMPLOYEES IN THE UNIT).

15393-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CENTRAL STRUCTURES LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15395-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. WEST ELGIN DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

UNIT: "ALL OFFICE EMPLOYEES OF THE RESPONDENT, SAVE AND EXCEPT SECRETARY-TREASURER AND PERSONS ABOVE THE RANK OF SECRETARY-TREASURER." (2 EMPLOYEES IN THE UNIT).

15398-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. TRIPP CONSTRUCTION LIMITED (RESPONDENT).

UNIT: "ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF HOPE IN THE COUNTY OF DURHAM AND THE TOWNSHIPS OF SOUTH MONAGHAN, HAMILTON, HALDIMAND AND ALNWICK IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15399-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 1081 (APPLICANT) V. WAYNE JUNIPER MASONRY (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF GREY, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (10 EMPLOYEES IN THE UNIT).

15407-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SUDBURY MEMORIAL HOSPITAL (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOSPITAL AT SUDBURY, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, FOREMEN, PERSONS ABOVE THE RANKS OF SUPERVISOR AND FOREMAN, CHIEF ENGINEER, PERSONS COVERED BY THE SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND SECURITY GUARDS." (220 EMPLOYEES IN THE UNIT).

FOR THE PURPOSES OF CLARITY, THE BOARD DECLARED THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS, OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALOGRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIOLOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS.

THE BOARD NOTED THE AGREEMENT OF THE PARTIES THAT PERSONS CLASSIFIED BY THE RESPONDENT AS WARD CLERKS, STORES CLERKS, PHYSIOTHERAPY AIDE, PHYSIOLOGY AIDE, PHARMACY ASSISTANTS, OPERATING ROOM CLERK, MESSENGERS, MEDICAL STENOGRAPHERS, MEDICAL RECORDS

TECHNICIAN, LABORATORY ASSISTANTS, INVENTORY CLERK, CLERK TYPISTS, ADMITTING CLERKS, STENOGRAPHERS, SWITCHBOARD OPERATORS, X-RAY ASSISTANTS AND MEDICAL RECORDS CLERK ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

15408-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. OMEGA CONSTRUCTION COMPANY LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15409-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 597 (APPLICANT) V. M. SULLIVAN & SONS LIMITED (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15410-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. POLLOCK - MCGIBBON LIMITED (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15411-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL UNION 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. MATTHEWS GROUP LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS READY MIX DIVISION IN THE TOWNSHIP OF LONDON, COUNTY OF MIDDLESEX, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (12 EMPLOYEES IN THE UNIT).

15420-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. COMMON CONSTRUCTION CO. LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15421-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. ADANAC CONSTRUCTION (NORTHERN) LTD. (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT WITHIN A RADIUS OF THIRTY-FIVE MILES FROM THE CITY OF SUDBURY FEDERAL BUILDING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15428-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 493 (APPLICANT) V. C. A. PITTS CONSTRUCTION (ONTARIO) LIMITED, MCNAMARA CORPORATION LIMITED AND ATLAS CONSTRUCTION CO LIMITED, (JOINT VENTURE) (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF SOUTH LORRAIN AND THE MUNICIPALITIES IMMEDIATELY ADJACENT THERETO, ALL IN THE DISTRICT OF TIMISKAMING, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (57 EMPLOYEES IN THE UNIT).

15435-68-R: LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 527 (APPLICANT) V. OMEGA CONSTRUCTION Co, LTD (RESPONDENT).

UNIT: "ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15437-68-R: TORONTO TYPOGRAPHICAL UNION, No. 91 (APPLICANT) V. THE COMPOSING ROOM LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT METROPOLITAN TORONTO ENGAGED IN COMPOSING ROOM WORK, SAVE AND EXCEPT NON-WORKING FOREMAN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (2 EMPLOYEES IN THE UNIT).

15446-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 249 (APPLICANT) V. D. LEBLANC INC. (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSLOWNE, FRONT OF LEEDS AND LANSLOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

15447-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 93 (APPLICANT) V. WEINBERG BROS. INC. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF FLOOR COVERING IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (2 EMPLOYEES IN THE UNIT).

15448-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. CANADIAN SODDING CONTRACTORS (WINDSOR) LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT IN THE COUNTIES OF OXFORD, PERTH, HURON, MIDDLESEX, BRUCE AND ELGIN, ENGAGED IN THE OPERATION OF CRANES, SHOVELS, BULLDOZERS AND SIMILAR EQUIPMENT, AND THOSE PRIMARILY ENGAGED IN THE REPAIRING AND MAINTAINING OF SAME, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (5 EMPLOYEES IN THE UNIT).

15449-68-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. M. SULLIVAN & SON LIMITED (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF SIMCOE, THE DISTRICT OF MUSKOKA AND THE TOWNSHIPS OF RAMA, MARA AND THORAH IN THE COUNTY OF ONTARIO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (4 EMPLOYEES IN THE UNIT).

15459-68-R: AMALGAMATED CLOTHING WORKERS OF AMERICA CLC AFL-CIO (APPLICANT) V. MASON KNITTING LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ACTON, SAVE AND EXCEPT FOREMEN, FORELADIES, PERSONS ABOVE RANK OF FOREMAN AND FORELADY, SALES AND OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK." (85 EMPLOYEES IN THE UNIT).

15474-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. CARPO STEEL (RESPONDENT).

UNIT: "ALL REINFORCING RODMEN IN THE EMPLOY OF THE RESPONDENT IN THE COUNTIES OF LENNOX AND ADDINGTON, FRONTENAC AND THE TOWNSHIPS OF REAR OF LEEDS AND LANSDOWNE, FRONT OF LEEDS AND LANSDOWNE, REAR OF YONGE AND ESCOTT, FRONT OF YONGE AND FRONT OF ESCOTT IN THE COUNTY OF LEEDS, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (6 EMPLOYEES IN THE UNIT).

15475-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. OVERHEAD DOOR COMPANY OF OSHAWA (RESPONDENT).

UNIT: "ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN." (3 EMPLOYEES IN THE UNIT).

15477-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. STRADWICK INDUSTRIES LTD. (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF FLOOR COVERING IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (7 EMPLOYEES IN THE UNIT).

CERTIFIED SUBSEQUENT TO POST-HEARING VOTE

14265-67-R: THE HOTELS, CLUBS, RESTAURANTS, TAVERNS EMPLOYEES UNION - LOCAL 261, OTTAWA (APPLICANT) V. THE TALISMAN MOTOR INN (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT ITS HOTEL IN OTTAWA, SAVE AND EXCEPT ASSISTANT MANAGERS, THOSE ABOVE THE RANK OF ASSISTANT MANAGER, CATERING MANAGER, HEAD HOUSEKEEPER, HEAD CHEF, MAITRE "D", PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR (24) HOURS PER WEEK, AND STUDENTS EMPLOYED FOR THE SCHOOL VACATION PERIOD." (95 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

43

NUMBER OF PERSONS WHO CAST BALLOTS

42

NUMBER OF BALLOTS MARKED IN FAVOUR
OF APPLICANT

23

NUMBER OF BALLOTS MARKED AGAINST
APPLICANT

19

15203-68-R: THE CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SEAFORTH COMMUNITY HOSPITAL (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT SEAFORTH, SAVE AND EXCEPT PROFESSIONAL MEDICAL STAFF, GRADUATE NURSING STAFF, UNDERGRADUATE NURSES, GRADUATE PHARMACISTS, UNDERGRADUATE PHARMACISTS, GRADUATE DIETITIANS, STUDENT DIETITIANS, TECHNICAL PERSONNEL, SUPERVISORS, PERSONS ABOVE THE RANK OF SUPERVISOR, OFFICE STAFF, AND PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, AND STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD." (26 EMPLOYEES IN THE UNIT).

THE BOARD FURTHER DECLARED IN ITS DECISION DATED OCTOBER 30TH, 1968:

THAT THE TERM TECHNICAL PERSONNEL COMPRISES PHYSIOTHERAPISTS,
OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, ELECTRO-ENCEPHALO-
GRAPHISTS, ELECTRICAL SHOCK THERAPISTS, LABORATORY, RADIO-
LOGICAL, PATHOLOGICAL AND CARDIOLOGICAL TECHNICIANS

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	21
NUMBER OF PERSONS WHO CAST BALLOTS	20
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	16
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	4

15236-68-R: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE
PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA -
LOCAL UNION 46 (APPLICANT) V. A & G SHANKS PLUMBING AND HEATING
LIMITED (RESPONDENT).

UNIT: "ALL PLUMBERS AND PLUMBERS' APPRENTICES, STEAMFITTERS AND
STEAMFITTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN METRO-
POLITAN TORONTO, THE COUNTIES OF YORK AND PEEL, THE TOWNSHIP OF
ESQUESING AND THE TOWNS OF OAKVILLE AND MILTON IN THE COUNTY OF
HALTON AND THE TOWNSHIP OF PICKERING IN THE COUNTY OF ONTARIO, SAVE
AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-
WORKING FOREMAN." (15 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED	
VOTERS' LIST	17
NUMBER OF PERSONS WHO CAST BALLOTS	17
NUMBER OF BALLOTS MARKED IN FAVOUR	
OF APPLICANT	9
NUMBER OF BALLOTS MARKED AGAINST	
APPLICANT	8

APPLICATIONS FOR CERTIFICATION DISMISSED DURING DECEMBER

NO VOTE CONDUCTED

14862-68-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL
WORKERS AFL-CIO-CLC (APPLICANT) V. ACME PAPER PRODUCTS COMPANY LIMITED
(RESPONDENT) V. PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL
466 (INTERVENER). (62 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 888).

15218-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL UNION 1758 (APPLICANT) V. ELROSE CONSTRUCTION CO. (RESPONDENT).
(7 EMPLOYEES).

15235-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA
(UE) (APPLICANT) V. ITT CANADA LTD. (RESPONDENT). (74 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 896).

15270-68-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDER'S INTERNATIONAL
UNION, RESTAURANT, CAFETERIA & TAVERN EMPLOYEES UNION, LOCAL 254
(APPLICANT) V. SCOTT'S RESTAURANTS CO. LIMITED (RESPONDENT).
(16 EMPLOYEES).

15283-68-R: HOTEL & RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL
UNION, RESTAURANT, CAFETERIA AND TAVERN EMPLOYEES UNION, LOCAL 254
(APPLICANT) V. SCOTT'S RESTAURANTS CO., LIMITED (RESPONDENT).
(16 EMPLOYEES).

15352-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL
UNION 141, LONDON, ONTARIO (APPLICANT) V. LAIDLAW TRANSPORT LIMITED
(RESPONDENT) V. CANADIAN TRANSPORTATION WORKERS' UNION NO. 188
(INTERVENER). (2 EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 916).

15388-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
LOCAL 1988 (APPLICANT) V. CON-DIGN LIMITED (RESPONDENT). (9 EMPLOYEES).

15397-68-R: LUMBER & SAWMILL WORKERS UNION LOCAL (APPLICANT) V.
CONSOLIDATED-BATHURST LIMITED (RESPONDENT) V. INTERNATIONAL WOODWORKERS
OF AMERICA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).
(NO EMPLOYEES).

(SEE INDEXED ENDORSEMENT PAGE 920).

CERTIFICATION DISMISSED SUBSEQUENT TO PRE-HEARING VOTE

15288-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA
(UE) (APPLICANT) V. SIMPLICITY PRODUCTS LIMITED (RESPONDENT) V.
SIMPLICITY WORKERS ASSOCIATION (INTERVENER).

VOTING CONSTITUENCY: "ALL EMPLOYEES OF THE RESPONDENT AT HESPELER, SAVE
AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, ALL
OTHER SALARIED EMPLOYEES, AND STUDENTS EMPLOYED AS SUMMER WORKERS."
(201 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED
VOTERS' LIST

203

NUMBER OF PERSONS WHO CAST BALLOTS

204

BALLOTS SEGREGATED AND NOT COUNTED

6

NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	87
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	110

15301-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 796
(APPLICANT) V. ST. JOSEPH'S HOSPITAL (RESPONDENT) V. CANADIAN UNION OF
OPERATING ENGINEERS, LOCAL 101 (INTERVENER).

VOTING CONSTITUENCY: "ALL STATIONARY ENGINEERS AND THEIR HELPERS
EMPLOYED IN THE BOILER ROOM OF THE RESPONDENT AT ITS HOSPITAL IN
TORONTO, SAVE AND EXCEPT THE CHIEF ENGINEER." (9 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	10
NUMBER OF PERSONS WHO CAST BALLOTS	10
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	0
NUMBER OF BALLOTS MARKED IN FAVOUR OF INTERVENER	10

CERTIFICATION DISMISSED SUBSEQUENT TO POST-HEARING VOTE

14678-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. THE BOARD
OF EDUCATION FOR THE CITY OF PETERBOROUGH (RESPONDENT) V. GROUP OF
EMPLOYEES (OBJECTORS).

UNIT: "ALL CARETAKERS AND MAINTENANCE STAFF IN THE EMPLOY OF THE
RESPONDENT, SAVE AND EXCEPT SUPERVISORS, PERSONS ABOVE THE RANK OF
SUPERVISOR AND OFFICE STAFF." (111 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	104
NUMBER OF PERSONS WHO CAST BALLOTS	104
NUMBER OF SPOILED BALLOTS	2
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	48
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	54

14744-68-R: SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION, LOCAL UNION
397 (APPLICANT) V. G.M. & H.O. HOLMES LIMITED (RESPONDENT).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT WORKING AT AND OUT OF PORT ARTHUR,
ENGAGED IN THE APPLICATION OF ROOFING MATERIAL (OTHER THAN WOOD SHINGLES
AND METAL) SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN,
OFFICE AND SALES STAFF, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIODS
AND EMPLOYEES OF THE RESPONDENT COVERED UNDER SUBSISTING COLLECTIVE AGREE-
MENTS." (13 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	8
NUMBER OF PERSONS WHO CAST BALLOTS	8
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	4
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

15233-68-R: RETAIL AND FOOD EMPLOYEES LOCAL UNION 175, AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC (APPLICANT) V. F. W. WOOLWORTH CO. LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES AT ITS WAREHOUSE AT 2277 SHEPPARD AVENUE WEST, IN METROPOLITAN TORONTO, SAVE AND EXCEPT ASSISTANT MANAGER, PERSONS ABOVE THE RANK OF ASSISTANT MANAGER AND OFFICE STAFF." (65 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	63
NUMBER OF PERSONS WHO CAST BALLOTS	63
NUMBER OF SPOILED BALLOTS	1
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	20
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	42

15242-68-R: TEAMSTERS' LOCAL UNION No. 230, READY MIX, BUILDING SUPPLY, HYDRO AND CONSTRUCTION DRIVERS, WAREHOUSEMEN AND HELPERS, I.B. OF T. (APPLICANT) V. HOFFMAN CONCRETE PRODUCTS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

UNIT: "ALL EMPLOYEES OF THE RESPONDENT AT NORTH BAY, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF." (6 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON VOTERS' LIST	6
NUMBER OF PERSONS WHO CAST BALLOTS	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	2
NUMBER OF BALLOTS MARKED AGAINST APPLICANT	4

15296-68-R: LAUNDRY AND LINEN DRIVERS AND INDUSTRIAL WORKERS UNION LOCAL 847 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. DUTCH LAUNDRY AND DRY CLEANERS LTD. (RESPONDENT) V. GROUP OF EMPLOYEES).

VOTING CONSTITUENCY: "ALL ROUTE SALESMEN OF THE RESPONDENT AT LONDON, SAVE AND EXCEPT ROUTE SUPERVISORS, THOSE ABOVE THE RANK OF ROUTE SUPERVISOR, OFFICE AND SALES STAFF." (16 EMPLOYEES).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	15
NUMBER OF PERSONS WHO CAST BALLOTS	15
NUMBER OF BALLOTS MARKED IN FAVOUR OF APPLICANT	6
NUMBER OF BALLOTS MARKED IN FAVOUR OF WHOLESALE AND RETAIL LAUNDRY AND DRY CLEANERS UNION OF LONDON	9

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING DECEMBER

15383-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (APPLICANT) V. DOMINION BRIDGE COMPANY LIMITED (RESPONDENT). (2 EMPLOYEES).

15400-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1758 (APPLICANT) V. JACKSON-LEWIS CO. LTD. (RESPONDENT). (2 EMPLOYEES).

15417-68-R: INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 (APPLICANT) V. BOWER INSTALLATION LTD., BOX 2040, STATION B, SCARBOROUGH, ONTARIO (RESPONDENT). (5 EMPLOYEES).

15442-68-R: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (APPLICANT) V. SUB-STRATA CONSTRUCTION LIMITED (RESPONDENT). (9 EMPLOYEES).

15450-68-R: CENTRAL ONTARIO DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. NEWMAN BRO. (RESPONDENT) (8 EMPLOYEES).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS DISPOSED OF

DURING DECEMBER

15249-68-R: VIRCHEM OF CANADA, LIMITED (APPLICANT) V. TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC (RESPONDENT). (6 EMPLOYEES). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 921).

15318-68-R: FRED RICHARDS (APPLICANT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA LOCAL UNION #2737 (RESPONDENT). (GRANTED).

(RE: W. STARK LUMBER COMPANY LIMITED,
ST. CATHARINES.)

UNIT: "EMPLOYEES OF W. STARK LUMBER COMPANY LIMITED AT ST. CATHARINES,
SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND
SALES STAFF." (7 EMPLOYEES IN THE UNIT).

NUMBER OF NAMES OF PERSONS ON REVISED VOTERS' LIST	7
NUMBER OF PERSONS WHO CAST BALLOTS	7
NUMBER OF BALLOTS MARKED IN FAVOUR OF RESPONDENT	0
NUMBER OF BALLOTS MARKED AGAINST RESPONDENT	7

15426-68-R: JOAN MCILWAIN (APPLICANT) V. UNITED ELECTRICAL RADIO &
MACHINE WORKERS OF AMERICA (RESPONDENT). (68 EMPLOYEES). (GRANTED).

(RE: DELTA ELECTRONICS LIMITED,
METROPOLITAN TORONTO.)

(SEE INDEXED ENDORSEMENT PAGE 923).

15463-68-R: LEO LAVOIE (APPLICANT) V. THE LUMBER & SAWMILL WORKERS UNION
LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA
AFL-CIO-CLC (RESPONDENT). (15 EMPLOYEES). (DISMISSED).

(RE: SPRUCE MOTORS CO. LTD.,
KAPUSKASING.)

(SEE INDEXED ENDORSEMENT PAGE 924).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL DISPOSED OF DURING

DECEMBER

15074-68-U: THE BOARD OF PARK MANAGEMENT OF THE CITY OF BRANTFORD
(APPLICANT) V. K. BEAL ET AL (RESPONDENTS). (WITHDRAWN).

15075-68-U: THE CORPORATION OF THE CITY OF BRANTFORD (APPLICANT) V.
G. AITCHISON ET AL (RESPONDENTS). (WITHDRAWN).

APPLICATION FOR DECLARATION THAT LOCKOUT UNLAWFUL DISPOSED OF DURING

DECEMBER

15368-68-U: AMALGAMATED TRANSIT UNION DIVISION 741 (APPLICANT) V. THE SKINNER SCHOOL BUS LINES LIMITED (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 927).

APPLICATIONS FOR CONSENT TO PROSECUTE DISPOSED OF DURING DECEMBER

14684-68-U: EASTWOOD CONSTRUCTION COMPANY LIMITED (APPLICANT) V. THE PETERBOROUGH BUILDING AND CONSTRUCTION TRADES COUNCIL ET AL (RESPONDENTS). (WITHDRAWN).

14685-68-U: EASTWOOD CONSTRUCTION COMPANY LIMITED (APPLICANT) V. DAN COWIE KENNETH BROWN ERNEST ELLEMENT JOHN WALKLING JACK C. MILBURN ART HOPKINSON CHARLES CULPIN JACK TRESSIDER BRADEN DUNFORD J. GRANT SCANLAN ALTON RICHARDSON SIDNEY A. YORK (RESPONDENTS). (WITHDRAWN).

14758-68-U: FRASER-BRACE ENGINEERING COMPANY, LIMITED (APPLICANT) V. P. POIRIER ET AL (RESPONDENT). (WITHDRAWN).

15007-68-U: FORESTEEL INDUSTRIES LIMITED (APPLICANT) V. R. ST. GEORGE ET AL (RESPONDENTS). (WITHDRAWN).

15108-68-U: EL-MET-PARTS LIMITED (APPLICANT) V. LOCAL 520, UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA (U.E.) (RESPONDENT). (WITHDRAWN).

15251-68-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL No. 46 (APPLICANT) V. A & G SHANKS PLUMBING & HEATING LIMITED AND JOHN DUNN (RESPONDENTS). (WITHDRAWN).

15308-68-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. UNITED STEELWORKERS OF AMERICA (RESPONDENT). (WITHDRAWN).

15321-68-U: CANADIAN UNION OF GENERAL EMPLOYEES (APPLICANT) V. UNITED STEELWORKERS OF AMERICA, LOCAL 3252, MICHAEL BASLER, CHARLES LORD, W. ATKINSON, J. MACFARLANE, J. WOCHNIK, BRUCE KEMP, D. EDWARDS, E. JAKOVAC, G. YATES, DAVID DODGSON, ROBERT BECKISI (RESPONDENTS). (WITHDRAWN).

15374-68-U: INTERNATIONAL CHEMICAL WORKERS UNION (APPLICANT) V. FERROX IRON LIMITED AND FRANK NOCCEY (RESPONDENTS). (WITHDRAWN).

15469-68-U: TORONTO PHOTO ENGRAVERS UNION LOCAL 35-P. LPIU (APPLICANT) V. GRAVURE CYLINDER DIVISION E.S.&A. ROBINSON (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

15473-68-U: E. S. & A. ROBINSON (CANADA) LTD. (APPLICANT) V. DAVID MITCHELL, ALLEN WILSON, ROY STAPLES, CHARLES CLARK, GEORGE PEARSON AND STANLEY KAPASKY (RESPONDENTS). (WITHDRAWN).

APPLICATION UNDER SECTION 63 (FINANCIAL STATEMENT) DISPOSED OF DURING
DECEMBER

15403-68-M: VICTOR A. D. DANIELS (COMPLAINANT) V. SHEET METAL WORKERS INTERNATIONAL ASSOCIATION (RESPONDENT). (WITHDRAWN).

COMPLAINTS UNDER SECTION 65 (UNFAIR LABOUR PRACTICE) DISPOSED OF DURING
DECEMBER

14439-68-U: THE BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 264 (COMPLAINANT) V. THE GREAT ATLANTIC AND PACIFIC TEA Co. LIMITED (KNOWN AS A. & P. FOOD STORES) (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 928).

14600-68-U: SALVATOR IANIRI (COMPLAINANT) V. SKLAR DIVISION, STANCOR LIMITED AND UPHOLSTERERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 50 (RESPONDENTS). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 934).

14960-68-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (COMPLAINANT) V. NORRENA ELECTRIC LIMITED (RESPONDENT). (GRANTED).

(SEE INDEXED ENDORSEMENT PAGE 935).

15175-68-U: FUEL, BUS, LIMOUSINE, PETROLEUM DRIVERS AND ALLIED EMPLOYEES, LOCAL UNION 352, AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (COMPLAINANT) V. ROCK DRILL ROD Co. LIMITED (RESPONDENT). (WITHDRAWN).

15177-68-U: INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (COMPLAINANT) V. WESTERN CAISSONS LIMITED (RESPONDENT). (WITHDRAWN).

15178-68-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC (COMPLAINANT) V. THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND TRADING INTO HUDSON'S BAY, OPERATING AS HUDSON'S BAY COMPANY (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 944).

15252-68-U: UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL NO. 46 (COMPLAINANT) V. A & G SHANKS PLUMBING & HEATING LIMITED (RESPONDENT). (WITHDRAWN).

15290-68-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (COMPLAINANT) V. THE VALLEY CITY MANUFACTURING COMPANY LIMITED (RESPONDENT). (WITHDRAWN).

15369-68-U: UNITED STEELWORKERS OF AMERICA (COMPLAINANT) V. SPEEDRACK LIMITED (RESPONDENT). (WITHDRAWN).

15376-68-U: INTERNATIONAL CHEMICAL WORKERS UNION (COMPLAINANT) V. FERROX IRON LIMITED (RESPONDENT). (WITHDRAWN).

15377-68-U: RICHARD FREEMAN (COMPLAINANT) V. U.A.W. (RESPONDENT). (DISMISSED).

(SEE INDEXED ENDORSEMENT PAGE 947).

15413-68-U: HOTEL AND RESTAURANT EMPLOYEES UNION, LOCAL 743 (AND MR. WILLIAM HANSON, BUSINESS REPRESENTATIVE) (COMPLAINANTS) V. NERO'S RESTAURANT J. AND I. DRUGAN LIMITED, (MR. JOHN DRUGAN) (RESPONDENTS). (WITHDRAWN).

15423-68-U: OIL, CHEMICAL & ATOMIC WORKERS INTERNATIONAL UNION (COMPLAINANT) V. TRW ELECTRONIC COMPONENTS LIMITED AND MELBA PATTON (RESPONDENTS). (WITHDRAWN).

15432-68-U: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 1988 (COMPLAINANT) V. CON'DIGN LTD., 34 BRIDGEPORT ROAD, WATERLOO, ONTARIO (RESPONDENT). (WITHDRAWN).

APPLICATION FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

15416-68-M: TORONTO CADMIUM PLATING & TINNING CO. LTD., AND C. L. C. LOCAL UNION #23679 (APPLICANTS). (GRANTED).

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING
DECEMBER

15390-68-M: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. FEDERAL WIRE AND CABLE COMPANY LIMITED DIVISION OF H. K. PORTER COMPANY (CANADA) LIMITED (RESPONDENT). (WITHDRAWN).

JURISDICTIONAL DISPUTES

15425(A)-68-JD: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2466 (COMPLAINANT) V. F. A. ACTON (RESPONDENT) V. UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL 1988 (INTERVENER #1) V. THE HYDRO-ELECTRIC POWER COMMISSION OF ONTARIO (INTERVENER #2) V. UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL 1410 (INTERVENER #3). (WITHDRAWN).

14500(A)-68-JD: ABITIBI PAPER COMPANY LTD. STURGEON FALLS DIVISION (COMPLAINANT) V. UNITED PAPER MAKERS AND PAPER WORKERS LOCAL 135 - A.F.L. - C.I.O. INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS - LOCAL NO. 71 A.F.L. - C.I.O. (RESPONDENTS).

(SEE INDEXED ENDORSEMENT PAGE 951).

14546(A)-68-JD: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS' LOCAL UNION 530 (COMPLAINANT) V. THE BELL TELEPHONE COMPANY OF CANADA AND THE CANADIAN TELEPHONE EMPLOYEES ASSOCIATION (RESPONDENTS). (WITHDRAWN).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION - CERTIFICATION

15312-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PRODUCERS CONTAINER (CANADA) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 960).

15315-68-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L. - C.I.O. - C.L.C. LOCAL 197 (APPLICANT) V. NICK MASNEY HOTELS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 961).

15315-68-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F. L. - C.I.O. - C.L.C. LOCAL 197 (APPLICANT) V. NICK MASNEY HOTELS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS). (REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 965).

15393-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CENTRAL STRUCTURES LIMITED (RESPONDENT).
(REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 967).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION - SECTION 65

15377-68-U: RICHARD FREEMAN (COMPLAINANT) V. U. A. W. (RESPONDENT).
(REQUEST DENIED).

(SEE INDEXED ENDORSEMENT PAGE 968).

INDEXED ENDORSEMENTS - CERTIFICATION

14403-68-R: LONDON AND DISTRICT BUILDING SERVICE WORKERS' UNION, LOCAL 220, B.S.E.I.U., A.F.L. - C.I.O. - C.L.C. (APPLICANT) V. THE BOARD OF GOVERNORS OF THE UNIVERSITY OF WESTERN ONTARIO (RESPONDENT) V. THE CANADIAN UNION OF OPERATING ENGINEERS (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND E. BOYER.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER H.F. IRWIN:

DECEMBER 4, 1968.

1. FOLLOWING THE REPORT OF THE EXAMINER DATED SEPTEMBER 23RD, 1968, CERTAIN OBJECTIONS WERE RAISED IN CONNECTION WITH THE CONTENT OF THE REPORT. ACCORDINGLY, A SUPPLEMENTARY REPORT OF THE EXAMINER WAS MADE ON OCTOBER 4TH, 1968. NO STATEMENT OF OBJECTIONS AND DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUBSECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER, DATED OCTOBER 4TH, 1968.

2. HAVING REGARD TO THE EVIDENCE IN THE EXAMINER'S REPORT AND THE REPRESENTATIONS OF THE PARTIES CONTAINED IN CORRESPONDENCE DIRECTED TO THE BOARD, THE BOARD FINDS AS FOLLOWS:

- (A) THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS FIRST COOKS NAMELY, F. J. DEWBURY, L. H. COLE AND K. H. RAUH DO NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND ARE EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT, AND ARE THEREFORE ELIGIBLE TO VOTE IN THIS MATTER. IN THIS REGARD THE BOARD HAS

APPLIED THE CRITERIA SET OUT IN THE FALCONBRIDGE NICKEL MINE LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, AT PAGE 329.

- (B) L. E. WALTON WAS NOT AT THE MATERIAL TIMES EMPLOYED BY THE RESPONDENT FOR MORE THAN 24 HOURS PER WEEK AND IS NOT AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND IS NOT ELIGIBLE TO VOTE IN THIS MATTER. IN MAKING THIS DETERMINATION THE BOARD HAS REFERENCE TO THE SYDENHAM HOSPITAL CASE, O.L.R.B. MONTHLY REPORT, MAY 1967, AT PAGE 135.
- (c) THE CLASSIFICATION OF POSTAL DRIVERS DOES NOT FALL WITHIN THE DESCRIPTION OF THE BARGAINING UNIT AS DETERMINED BY THE BOARD IN THIS MATTER. THE FUNCTION OF SUCH EMPLOYEES BEING SERVICE TO THE RESPONDENT OTHER THAN SERVICE AND MAINTENANCE TO BUILDING AND GROUNDS AS SUCH WOULD BE MORE APPROPRIATELY INCLUDED IN AN OFFICE AND CLERICAL BARGAINING UNIT WHERE THEIR APPARENT COMMUNITY OF INTEREST LIES. HENCE, L. C. MILLS AND FLOYD COLE ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND ARE NOT ELIGIBLE TO VOTE IN THIS MATTER.

3. THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT A. VOWLES IS NOT ELIGIBLE TO VOTE AND THAT V. PIOTROWICZ IS ENTITLED TO VOTE IN THIS MATTER.

4. THE REMAINING DETERMINATION FOR THE BOARD TO MAKE IS WHETHER THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS HALL CLERKS FALL WITHIN THE DESCRIPTION OF THE BARGAINING UNIT. THE RELEVANT PART OF THAT DESCRIPTION SET OUT IN THE BOARD'S DECISION DATED JUNE 12TH, 1968 IS:

"ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS LONDON CAMPUS IN THE MAINTENANCE AND SERVICE OF BUILDINGS AND GROUNDS". THE EVIDENCE OF MR. MCMASTER WAS SET OUT IN THE EXAMINER'S REPORT AS REPRESENTATIVE OF THE DUTIES AND RESPONSIBILITIES OF ALL THE HALL CLERKS. ON JUNE 1ST, 1968, THE OCCUPATIONAL CLASSIFICATION FOR THESE PERSONS WAS CHANGED FROM HALL PORTER TO HALL CLERK. THE EVIDENCE DISCLOSES THAT MCMASTER IS DIRECTLY RESPONSIBLE TO THE SUPERVISOR OF RESIDENCES AND IS ENGAGED IN THE MAIN, WITH CLERICAL-TYPE DUTIES. HE ACTS AS A RECEPTIONIST FOR THE RESIDENCE, HE ANSWERS THE TELEPHONE, TAKES MESSAGES, NOTIFIES RESIDENTS OF VISITORS, KEEPS A RECORD OF THE KEYS, SORTS AND DISTRIBUTES MAIL.

HE COLLECTS THE STUDENTS' LAUNDRY AND DRY CLEANING, CHECKS THE SAME ON SLIPS AND RETURNS THE COMPLETED ORDERS TO THE RESIDENTS. HE DOES NOT DO ANY ACTUAL LAUNDERING OR CLEANING OF CLOTHES ETC., NOR DOES HE HAVE ANY JANITORIAL DUTIES WITH RESPECT TO THE BUILDING. IN ADDITION, HE HAS CERTAIN EMERGENCY FIRE CALL DUTIES, READS 4 WATER METERS AND RECORDS THE READINGS, REPORTS ANY FAILURE OF EQUIPMENT, INCLUDING THE SUMP PUMP SYSTEM. HE ACCEPTS KEYS AND MONEY FOR ACCOMMODATION FROM VISITORS AND RESIDENTS. HE DOES NOT CARRY BAGGAGE FOR GUESTS OR RESIDENTS. MCMASTER STATED THAT 90% OF HIS TIME IS SPENT IN HIS OFFICE AND MOST OF HIS TIME IS TAKEN UP IN ACTING AS A RECEPTIONIST, RECEIVING CALLS, AND MESSAGES AND THE NEXT LARGEST FUNCTION WOULD BE SORTING MAIL. IT IS READILY APPARENT THAT A HALL CLERK'S PRIMARY FUNCTION IS IN THE NATURE OF CLERICAL DUTY AND SERVICE TO THE RESIDENTS AND ONLY INCIDENTALLY DOES HE HAVE ANY CONNECTION WITH THE SERVICES IN THE BUILDING. HIS DUTIES IN THE LATTER REGARD IN THE NORMAL SENSE CANNOT BE REGARDED AS PART OF THE "SERVICE OF BUILDINGS" AS SET OUT IN THE DESCRIPTION OF THE BARGAINING UNIT. WHILE IT MAY BE THAT PERSONS CLASSIFIED AS "PORTERS" HAVE BEEN INCLUDED IN BARGAINING UNITS SIMILARLY DESCRIBED AS IN THE PRESENT APPLICATION AND REPRESENTED BY THE APPLICANT, WE ARE NOT, HOWEVER, AWARE OF AN ISSUE BEING RAISED BY ANY PARTY WITH RESPECT TO THE CLASSIFICATION BEFORE US IN THIS MATTER. ON ALL THE EVIDENCE WE ARE NOT PERSUADED THAT THESE PERSONS HAVE A COMMUNITY OF INTEREST WITH THOSE PERSONS IN THE CLASSIFICATIONS USUALLY INVOLVED IN A SERVICE AND MAINTENANCE UNIT.

5. HAVING REGARD THEREFORE TO THE FOREGOING, WE FURTHER FIND THAT THOSE PERSONS CLASSIFIED BY THE RESPONDENT AT HALL CLERKS ARE NOT EMPLOYEES OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT AND ARE NOT ELIGIBLE TO VOTE IN THIS MATTER.

6. THE REGISTRAR IS DIRECTED TO COUNT THE BALLOTS OF THOSE PERSONS ELIGIBLE TO VOTE IN THE REPRESENTATION VOTE HELD IN THIS MATTER AND REPORT TO THE BOARD.

DECISION OF BOARD MEMBER E. BOYER:

DECEMBER 4, 1968.

I DISSENT WITH RESPECT TO THE MAJORITY DECISION TO EXCLUDE FROM THE BARGAINING UNIT THOSE PERSONS CLASSIFIED BY THE RESPONDENT AS HALL CLERKS. ON ALL THE EVIDENCE, I WOULD INCLUDE SUCH A CLASSIFICATION IN THE BARGAINING UNIT APPLIED FOR BY THE APPLICANT IN THIS MATTER.

14862-68-R: INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS AFL-CIO-CLC (APPLICANT) V. ACME PAPER PRODUCTS COMPANY LIMITED (RESPONDENT) V. PRINTING SPECIALTIES AND PAPER PRODUCTS UNION, LOCAL 466 (INTERVENER).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS F. W. MURRAY AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: L. MACLEAN, W. ANDERSON, DON HOLDER FOR THE APPLICANT; B.D. ROSE FOR THE RESPONDENT; L.C. ARNOLD, T. PELLETIER FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 10, 1968.

1. THE APPLICANT APPLIES FOR CERTIFICATION FOR A UNIT OF EMPLOYEES OF THE RESPONDENT IN THE TOWNSHIP OF VAUGHAN. THE INTERVENER SEEKS TO ESTABLISH AS A BAR TO THIS APPLICATION THAT THERE IS A COLLECTIVE AGREEMENT IN EFFECT COVERING THE EMPLOYEES OF THE RESPONDENT AFFECTED BY THIS APPLICATION. THE INTERVENER FURTHER SUBMITS THAT THE UNIT OF EMPLOYEES SOUGHT TO BE COVERED BY THIS APPLICATION IS NOT AN APPROPRIATE UNIT FOR COLLECTIVE BARGAINING.
2. THE RESPONDENT OPERATES A PLANT AT CARLAW STREET IN METROPOLITAN TORONTO THE EMPLOYEES IN WHICH ARE COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT. THE RESPONDENT BUILT A NEW PLANT ON KEELE STREET IN THE TOWNSHIP OF VAUGHAN WHICH BECAME OPERATIONAL IN THE SPRING OF 1968. THE RESPONDENT OPERATES BOTH OF THESE PLANTS WHICH HAVE SUBSTANTIALLY THE SAME OPERATIONS IN THE MANUFACTURE AND SALE OF CORRUGATED CONTAINERS. THE EVIDENCE ESTABLISHES THAT THE NEW PLANT OPERATES IN CONJUNCTION WITH THE PLANT ON CARLAW AVENUE AND WHILE THE PLANTS OPERATE INDEPENDENTLY, ORDERS ARE TRANSFERRED BETWEEN THE PLANTS, SOME OF WHICH WILL BE PARTIALLY PROCESSED AT EACH PLANT. SOME PRODUCTION WAS TRANSFERRED TO THE NEW PLANT AND CERTAIN FUNCTIONS WILL BE PERFORMED AT THE CARLAW PLANT FOR THE NEW PLANT. SOME EQUIPMENT HAS BEEN TRANSFERRED FROM THE OLD PLANT TO THE NEW PLANT, BUT IT APPEARED FROM THE TESTIMONY OF MR. ROSE, THE PRESIDENT OF THE RESPONDENT, THAT SUCH MOVES WOULD BE AS PERMANENT AS POSSIBLE. THE RESPONDENT, WHILE STATING THERE WOULD BE SOME MOVEMENT OF PERSONNEL BACK AND FORTH, SAID THAT IT DID NOT PLAN FOR ANY SYSTEMATIC INTERCHANGE OF EMPLOYEES BETWEEN THE TWO PLANTS. THE MAINTENANCE STAFF IS LOCATED AT CARLAW AVENUE AND THEY SERVICE BOTH PLANTS. MR. OELBAUM, GENERAL MANAGER OF THE RESPONDENT, STATED THAT THE NEW PLANT WILL NOT BE INDEPENDENT FOR ALL FUNCTIONS AS SALES, OFFICE AND SOME PRODUCTION SERVICES WILL BE MAINTAINED AT THE OLD PLANT FOR THE NEW PLANT.
3. THE APPLICANT SUBMITS THAT THE BARGAINING UNIT AT THE KEELE STREET PLANT IS APPROPRIATE AS THE EVIDENCE IN SUPPORT OF THE INTERVENER'S SUBMISSIONS FALL SHORT OF DEMONSTRATING A COMMUNITY OF INTEREST BETWEEN THE TWO PLANTS. SPECIFICALLY, THE APPLICANT SUBMITS THAT THE TRANSFERS OF EMPLOYEES ARE ON A PERMANENT BASIS AND THERE IS NOT SYSTEMATIC INTERCHANGE OF EMPLOYEES NOR ARE THE PLANTS SO INDEPENDENT THAT IF SPLIT FOR THE PURPOSES OF BARGAINING, WOULD CAUSE AN ECONOMIC HARDSHIP TO THE EMPLOYER.
4. THE GENERAL POLICY OF THE BOARD IS THAT SINGLE PLANT UNITS ARE APPROPRIATE FOR COLLECTIVE BARGAINING, HOWEVER, IT DOES CONSIDER THE PARTICULAR CIRCUMSTANCES IN THE SITUATION WHERE AN EMPLOYER HAS MORE THAN

ONE PLANT IN A GEOGRAPHICAL AREA. IN THE LATTER REGARD THE BOARD APPLIES CERTAIN TESTS TO DETERMINE WHICH ESTABLISHMENTS OR LOCATIONS CONSTITUTE AN APPROPRIATE BARGAINING UNIT. SUCH CRITERIA ARE SET OUT IN THE USARCO LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1967, P. 526 AT P. 529. HAVING CONSIDERED ALL THE FACTORS INVOLVED IN THIS MATTER AND APPLYING THERETO THE CRITERIA SET OUT IN THE USARCO CASE [SUPRA] WE FIND THAT INTER ALIA IN THE ABSENCE OF SYSTEMATIC INTERCHANGE OF EMPLOYEES AND INTEGRATION OF THE MANUFACTURING PROCESS RESULTING IN INTERDEPENDENT OPERATIONS AND CONSIDERING THE GEOGRAPHIC LOCATION OF EACH OF THE PLANTS, THE UNIT OF EMPLOYEES FOR WHOM THE APPLICANT HAS APPLIED IS APPROPRIATE FOR COLLECTIVE BARGAINING. WE ALSO HAVE REFERENCE TO THE GREB INDUSTRIES LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1968, P. 1164.

5. THE INTERVENER WAS CERTIFIED AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF THE RESPONDENT IN 1949. THERE HAVE BEEN SIX COLLECTIVE AGREEMENTS SINCE THAT TIME MADE BETWEEN THE INTERVENER AND THE RESPONDENT. THE RESPONDENT OPERATED ONLY ONE PLANT WHICH IS LOCATED AT CARLAW STREET IN TORONTO UNTIL 1968 WHEN A NEW PLANT WAS OPENED AT KEELE STREET. IN 1958 THE SCOPE CLAUSE OF THE COLLECTIVE AGREEMENT BETWEEN THE INTERVENER AND THE RESPONDENT WAS AMENDED TO READ: "AT CARLAW AVENUE PLANT OR ELSEWHERE AS MAY BE DESIRED BY THE EMPLOYER". JOHN STEELE, THE PRESIDENT OF THE INTERVENER, TESTIFIED THAT PRIOR TO 1958 THE COMPANY BEGAN TO OPERATE OTHER DIVISIONS WHICH HAD BEEN LOCATED PREVIOUSLY AT THE CARLAW STREET PLANT AND WHICH THE UNION WOULD THEN HAVE TO ORGANIZE AGAIN. CONSEQUENTLY, TO OVERCOME THAT SITUATION, THE AMENDMENT TO THE SCOPE CLAUSE WAS MADE IN THE COLLECTIVE AGREEMENT REFERRED TO ABOVE. THE INTENT OF THE PARTIES WAS TO COVER THE ESTABLISHMENT OF OTHER PLANTS BY THE RESPONDENT. THERE WERE AT THAT TIME, HOWEVER, NO SPECIFIC LOCATIONS IN MIND. DURING THE TERM OF THE COLLECTIVE AGREEMENT DATED 1966 (EXPIRING JUNE 22ND, 1968) THE RESPONDENT EXPANDED ITS CORRUGATED BOX OPERATIONS TO A NEW PLANT LOCATED AT KEELE STREET IN THE TOWNSHIP OF VAUGHAN AND IN JANUARY 1968 THE INTERVENER AND THE RESPONDENT COMMENCED DISCUSSIONS WITH RESPECT TO THIS SITUATION. THE NEW PLANT CAME INTO OPERATION IN MAY 1968.

6. BY AGREEMENT DATED JANUARY 26TH, 1968 BETWEEN THE RESPONDENT AND THE INTERVENER THE COLLECTIVE AGREEMENT EXPIRING JUNE 22ND, 1968 WAS AMENDED AS TO SENIORITY TRANSFERS AND TO THE RECOGNITION OF THE UNION AS THE BARGAINING AGENT FOR THE RESPONDENT'S EMPLOYEES IN THE COUNTY OF YORK WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT. SUBSEQUENTLY, NOTICE TO BARGAIN PURSUANT TO SECTION 40 OF THE ACT WAS GIVEN TO THE RESPONDENT BY THE INTERVENER AND THE PARTIES MET AND BARGAINED IN THE LATTER PART OF APRIL. EARLY IN JUNE A CONCILIATION OFFICER WAS APPOINTED. AN AGREEMENT WAS MADE BY THE RESPONDENT AND THE INTERVENER ON JUNE 17TH, 1968 WHICH WAS RATIFIED BY THE MEMBERS OF THE INTERVENER AT A MEETING HELD FOR THAT PURPOSE ON JUNE 23RD AND A MEMORANDUM OF AGREEMENT WAS SIGNED BY THESE PARTIES ON JUNE 24TH, 1968. JOHN

PELLETIER, A BUSINESS AGENT FOR THE INTERVENER, SAID THAT HE WAS IN CHARGE OF THE NEGOTIATION AND UNDERSTOOD THAT THEY WERE BARGAINING FOR ALL THE EMPLOYEES OF THE RESPONDENT INCLUDING BOTH PLANTS, AND CERTAINLY THE RESPONDENT DID NOT STATE TO THE CONTRARY. THE RESPONDENT AND THE INTERVENER DID, HOWEVER, DISPOSE OF ALL MATTERS IN DISPUTE BETWEEN THEM AND THE RESPONDENT IMPLEMENTED ALL OF THE CONDITIONS OF SETTLEMENT AT BOTH PLANTS AFTER JUNE 24TH. THE MEMORANDUM OF SETTLEMENT REFERRED TO ABOVE DEALT WITH CERTAIN PROVISIONS FOR WAGES AND WORKING CONDITIONS BUT DID NOT RELATE THAT THE TERMS OF THE PREVIOUS COLLECTIVE AGREEMENT WERE INCORPORATED IN IT. THE INTERVENER'S POSITION IS THAT THE COLLECTIVE AGREEMENT WHICH IS A BAR TO THIS APPLICATION CONSISTS OF THE AGREEMENT DATED JUNE 22ND, 1966, THE AMENDING AGREEMENT DATED JANUARY 26TH, 1968 AND THE MEMORANDUM OF SETTLEMENT DATED JUNE 24TH, 1968. MR. OELBAUM, THE GENERAL MANAGER OF THE RESPONDENT, TESTIFIED THAT AFTER JUNE 24TH HE THOUGHT THERE WAS A CONTRACT CONSISTING OF THE ABOVE DOCUMENTS BETWEEN THE RESPONDENT AND THE INTERVENER AND STARTED TO ACT ON THAT BASIS. THE INTERVENER SUBMITS THAT THE AGREEMENT SATISFIES THE PROVISIONS OF SECTION 1(c) OF THE ACT AND DENIES THAT IT WAS EXECUTED IN THE SHADOW OF AN ORGANIZING CAMPAIGN AS ALLEGED BY THE APPLICANT.

7. THE INTERVENER ADMITS THAT IT KNEW THAT THE APPLICANT WAS ATTEMPTING TO ORGANIZE THE EMPLOYEES AT THE KEELE STREET PLANT SOME TIME IN MAY. IN THE LATTER PART OF MAY, THE RESPONDENT STATED THAT IT BECAME AWARE OF THE DISPUTE BETWEEN THE INTERVENER AND THE APPLICANT. DURING THIS TIME THE APPLICANT AND THE INTERVENER TOOK SOME ACTIONS IN THIS MATTER WITH THE C.L.C. (THE BOARD, HOWEVER, IS NOT HERE CONCERNED WITH THE EVIDENCE PERTAINING TO SUCH MATTERS AS BEING IRRELEVANT TO ITS DETERMINATION AND IS MENTIONED ONLY INsofar AS SETTING OUT THE SEQUENCE OF EVENTS). JOHN STEELE SAID THAT THE PARTIES INTENDED TO COVER THE NEW PLANT WITH THE AMENDMENT TO THE AGREEMENT IN JANUARY 1968 AT WHICH TIME THE APPLICANT HAD NOT ENTERED INTO THE PICTURE AND THAT HE DID NOT EXPECT ANY APPLICATION TO BE MADE AT LEAST UNTIL THE C.L.C. HAD MADE A RULING. PELLETIER SAID THAT DURING NEGOTIATIONS HE KNEW THAT THE APPLICANT WAS ORGANIZING BUT DENIED THAT THIS WAS AN INFLUENCE IN THE NEGOTIATIONS. OELBAUM SAID THAT HE SAW ORGANIZERS PASSING OUT APPLICATIONS IN THE LATTER PART OF JUNE BUT HE WAS AWARE OF THE JURISDICTIONAL DISPUTE BETWEEN THE TWO UNIONS IN MAY. THE RESPONDENT ENTERED INTO THE NEGOTIATIONS WITH THE INTERVENER AND DID NOT ADVISE IT OF ANY CHANGE IN THE SCOPE OF BARGAINING. MR. ROSE, THE PRESIDENT OF THE RESPONDENT, SAID THAT HE HAD KNOWLEDGE OF THE APPLICANT'S CAMPAIGN ABOUT JUNE 4TH AND KNEW OF THE MATTERS WITH THE C.L.C. SOMETIME IN MAY. HE THOUGHT THAT IT WAS A "GREY AREA" WHETHER THE NEGOTIATIONS BETWEEN THE RESPONDENT AND THE INTERVENER COVERED BOTH PLANTS AND FURTHER THE CONTRACT WOULD BE APPLIED TO THE NEW PLANT PENDING A RULING BY THE C.L.C.

THE EMPLOYEES AT THE NEW PLANT WERE GIVEN THE BENEFITS AS NEGOTIATED. HE SAID THAT NO MENTION OF THE APPLICANT WAS MADE DURING THE NEGOTIATIONS. THERE WERE 46 EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON JUNE 24TH, 1968. THE INTERVENER STATED THAT 10 EMPLOYEES WHO WERE MEMBERS OF THE INTERVENER UNION WERE TRANSFERRED FROM THE CARLAW AVENUE PLANT TO THE KEELE STREET PLANT, SOME PRIOR TO AND SOME AFTER JUNE 24TH AND IT SUBMITTED AT THE HEARING 23 APPLICATIONS FOR MEMBERSHIP, SOME OF WHICH WERE DATED PRIOR TO JUNE 24TH, AND SOME AFTER THAT DATE. THE INTERVENER SUBMITTED THEREFORE THAT IT REPRESENTED EMPLOYEES AT THE TIME THE AGREEMENT DATED JUNE 24TH, 1968 WAS ENTERED INTO WHICH AGREEMENT WAS NOT MADE UNDER THE SHADOW OF AN ORGANIZING CAMPAIGN AND IT TOGETHER WITH THE OTHER AGREEMENTS REFERRED TO IN EVIDENCE CONSTITUTE A COLLECTIVE AGREEMENT BINDING ON THE INTERVENER AND THE RESPONDENT WHICH CONSTITUTES A BAR TO THIS APPLICATION.

8. THE APPLICANT'S POSITION IN THIS MATTER IS THAT THE SCOPE CLAUSE IN THE AGREEMENT DATED JUNE 22ND, 1966 DID NOT GO BEYOND THE CARLAW AVENUE PLANT. THE NEW PLANT WAS PLANNED PRIOR TO JANUARY 1968 AND THE RESPONDENT HAD ABOUT 3 EMPLOYEES AT THE NEW PLANT IN JANUARY BUT DUE TO A CONSTRUCTION PROJECT STRIKE THEY HAD TO BE WITHDRAWN. THE APPLICANT'S ORGANIZING CAMPAIGN STARTED IN MAY 1968 OF WHICH THE PARTIES WERE AWARE AND BEFORE JUNE 24TH, 1968 REPRESENTATIVES OF BOTH THE APPLICANT AND THE INTERVENER MET AND DISCUSSED THE DISPUTE AT WHICH TIME THE INTERVENER KNEW OF THE CAMPAIGN BUT CHOSE TO IGNORE IT. THIS APPLICATION WAS MADE ON JULY 17TH, 1968. AS OF JUNE 24TH, THERE WERE 46 EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT AT THE KEELE STREET PLANT AND THE INTERVENER SUBMITTED 23 APPLICATION FOR MEMBERSHIP CARDS, NINETEEN OF WHICH WERE SIGNED PRIOR TO THAT DATE BUT THERE WAS NO EVIDENCE OF PAYMENT AS THE INTERVENER RELIED ON THE TERMS OF THE COLLECTIVE AGREEMENT. THE APPLICANT SUBMITS THAT SUCH CARDS SHOULD NOT BE RECEIVED AS EVIDENCE AND THE CHECK-OFF CARDS FOR THE 10 EMPLOYEES TRANSFERRED FROM CARLAW TO KEELE DO NOT CONSTITUTE EVIDENCE OF MEMBERSHIP. HENCE, THE APPLICANT ARGUES THAT NEITHER IN JANUARY OR JUNE DID THE INTERVENER ESTABLISH THAT IT HAD MEMBERS AT KEELE STREET. NOR WAS IT ESTABLISHED THAT THE RESPONDENT WAS BARGAINING FOR BOTH PLANTS. THE APPLICANT STATES THAT THE INTERVENER MUST ESTABLISH THAT IT HAS AS MEMBERS, A MAJORITY OF EMPLOYEES IN THE BARGAINING UNIT AS A WHOLE WHICH IT FAILED TO DO. FURTHERMORE, THE INTERVENER SOUGHT TO ENTER INTO A NEW AGREEMENT UNDER THE GUISE OF AN AMENDMENT WHICH AMENDMENT SUBSTITUTED AN ENTIRELY DIFFERENT BARGAINING UNIT. THE DOCUMENTS PRESENTED BY THE INTERVENER DO NOT CONSTITUTE A COLLECTIVE AGREEMENT WITHIN THE MEANING OF THE ACT AND ARE THEREFORE NOT A BAR. THE APPLICANT ALSO ARGUED THAT THE INTERVENER DID NOT PROVE ITS STATUS TO ENTER INTO THE AGREEMENTS DATED JANUARY 26TH AND JUNE 24TH AS THEY MIGHT APPLY TO THE KEELE STREET PLANT AND THAT THE MEMORANDUM OF SETTLEMENT OF JUNE 24TH, 1968 WAS MADE IN THE SHADOW OF THE APPLICANT'S MEMBERSHIP CAMPAIGN.

9. AS OF JUNE 24TH, 1968 THE RESPONDENT ADVISED THE BOARD THAT THERE WERE 46 EMPLOYEES OF THE KEELE STREET PLANT. AS OF THE DATE OF THE APPLICATION THERE WERE 67 EMPLOYEES IN THE BARGAINING UNIT PROPOSED BY THE APPLICANT AND THE EVIDENCE INDICATED THAT THERE WOULD BE APPROXIMATELY 100 EMPLOYEES AT THE KEELE STREET PLANT. THERE WAS HOWEVER NO CLEAR EVIDENCE OF FIRM PLANS FOR THE BUILD UP OF THE WORK FORCE SO AS TO CONSTITUTE SUFFICIENT REASON FOR DELAY IN THE GRANTING OF BARGAINING RIGHTS. THERE IS NO QUESTION THAT THE INTERVENER REPRESENTED THE EMPLOYEES AT THE CARLAW STREET PLANT AND HAD WITH THE RESPONDENT ENTERED INTO A SERIES OF COLLECTIVE AGREEMENTS FOR THAT BARGAINING UNIT. HAVING IN MIND THE HISTORY OF THE SPINNING-OFF OF CERTAIN PARTS OF THE RESPONDENT'S BUSINESS RESULTING IN FURTHER ORGANIZING CAMPAIGNS BY THE INTERVENER WE FIND NOTHING IMPROPER IN THE AGREEMENT OF THE PARTIES TO EXPAND THE BARGAINING UNIT SO AS TO CONTINUE THE INTERVENER'S BARGAINING RIGHTS IN A NEW PLANT OPERATION WHICH IS SET OUT IN THE AMENDING AGREEMENT DATED JANUARY 25TH, 1968. WHILE AT THAT TIME THERE WERE IN EFFECT, NO EMPLOYEES OF THE RESPONDENT AT THE KEELE STREET PLANT, THE INTERVENER DID REPRESENT THE EMPLOYEES AT THE CARLAW STREET PLANT AND THEREFORE HAD STATUS TO ENTER INTO THAT AGREEMENT. THE SUBSISTING COLLECTIVE AGREEMENT THEN, EXPIRED IN JUNE 22ND, 1968 AND THE INTERVENER GAVE THE RESPONDENT NOTICE TO BARGAIN PURSUANT TO THE PROVISIONS OF THE ACT AND THE PARTIES DID SUBSEQUENTLY MEET AND BARGAINED RESULTING IN THE AGREEMENT DATED 24TH JUNE 1968 WHICH WAS RATIFIED BY THE INTERVENER'S MEMBERSHIP AND IMPLEMENTED BY THE RESPONDENT ON JUNE 25TH, 1968. WE DO NOT ACCEPT THE APPLICANT'S ARGUMENT THAT THE INTERVENER'S STATUS TO ENTER INTO THAT AGREEMENT MUST BE PROVEN BY EVIDENCE OF MEMBERSHIP FILED BEFORE THE TERMINAL DATE OF THIS APPLICATION AND IN SIMILAR FORM TO THAT REQUIRED OF THE APPLICANT BY THE BOARD. WE ARE SATISFIED THAT THE EVIDENCE PRESENTED BY THE INTERVENER SUFFICIENTLY ESTABLISHED THAT IT REPRESENTED A MAJORITY OF THE EMPLOYEES OF THE RESPONDENT AT THE KEELE STREET PLANT ON JUNE 24TH, 1968. FURTHERMORE, WE FIND THAT THE AGREEMENT ENTERED INTO BETWEEN THE RESPONDENT AND THE INTERVENER WAS A COLLECTIVE AGREEMENT WITHIN THE MEANING OF SECTION 1(c) OF THE ACT. HAVING REGARD TO THE BOARD'S FINDING IN PARAGRAPH 4 ABOVE, CLEARLY AT THE KEELE STREET PLANT ARE BASED UPON VOLUNTARY RECOGNITION AND SINCE THIS IS THE FIRST YEAR OF THE COLLECTIVE AGREEMENT BY WHICH THE INTERVENER IS RECOGNIZED AS THE BARGAINING AGENT FOR EMPLOYEES IN THE BARGAINING UNIT AT THAT PLANT THE ONUS UNDER SECTION 45(A) OF THE ACT IS ON THE PARTIES TO THE AGREEMENT TO ESTABLISH THE INTERVENER'S STATUS TO REPRESENT EMPLOYEES IN THAT BARGAINING UNIT. ALTHOUGH THERE MAY BE A BUILDUP OF THE WORK FORCE SUBSEQUENT TO THE TIME THE AGREEMENT WAS ENTERED INTO, THE MATTER IN ISSUE IS THE SUFFICIENCY OF THE INTERVENER'S REPRESENTATION OF EMPLOYEES AT THE TIME OF THE COLLECTIVE AGREEMENT. ON ALL THE EVIDENCE IN THIS RESPECT WE FIND THAT THE RESPONDENT ACTED IN WELL FOUNDED BELIEF THAT THE INTERVENER DID REPRESENT A MAJORITY OF ITS EMPLOYEES AND THAT THE PARTIES HAVE SATISFIED THE ONUS ON THEM IN THIS REGARD.

10. WHEN THE COLLECTIVE AGREEMENT DATED JUNE 22ND, 1966 WAS AMENDED IN JANUARY THE APPLICANT HAD NOT COMMENCED ITS ORGANIZATIONAL CAMPAIGN. THIS STARTED IN MAY. BOTH THE INTERVENER AND THE RESPONDENT ADMIT THAT THEY KNEW OF THE CAMPAIGN BEING CONDUCTED BY THE APPLICANT IN MAY AND JUNE, HOWEVER, IN ALL THE CIRCUMSTANCES OF THIS PARTICULAR MATTER IT IS EVIDENT THAT THERE WAS NO BAD FAITH ON THE PART OF EITHER DURING THEIR NEGOTIATIONS AND THAT THEY WERE NOT ATTEMPTING TO THWART THE APPLICANT'S CAMPAIGN BY ENTERING INTO THE MEMORANDUM ON JUNE 24TH, 1968. ALTHOUGH THE BOARD HAS FOUND THAT THE EMPLOYEES OF THE RESPONDENT AT THE KEELE STREET PLANT FORM AN APPROPRIATE BARGAINING UNIT, THIS WAS OBVIOUSLY NOT THE OPINION OF THE PARTIES AT THAT TIME HAVING REGARD TO THE AMENDING AGREEMENT WHICH THEY HAD ENTERED INTO IN JANUARY. ALTHOUGH A COMPETING UNION'S CAMPAIGN EXISTED IN JUNE, THERE IS NO EVIDENCE OF BAD FAITH ON THE PART OF EITHER THE INTERVENER OR THE RESPONDENT IN THIS MATTER AND, IN OUR VIEW, THIS IS NOT THE SITUATION WHERE THE BOARD SHOULD NULLIFY THE COLLECTIVE AGREEMENT AS BEING EXECUTED BY THE PARTIES IN THE SHADOW OF AN ORGANIZING CAMPAIGN.

11. ON ALL OF THE EVIDENCE AND HAVING CONSIDERED THE REPRESENTATIONS OF THE PARTIES, IT IS OUR CONCLUSION THAT THE INTERVENER DID AT THE MATERIAL TIMES REPRESENT THE EMPLOYEES OF THE RESPONDENT AND THAT THERE IS A COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE RESPONDENT AND THE INTERVENER COVERING THE EMPLOYEES AFFECTED BY THIS APPLICATION. THE COLLECTIVE AGREEMENT DOES NOT EXPIRE UNTIL JUNE 22ND, 1970. THE APPLICATION IS THEREFORE UNTIMELY BY VIRTUE OF THE PROVISIONS OF SECTION 5 OF THE LABOUR RELATIONS ACT.

12. THE APPLICATION IS ACCORDINGLY DISMISSED.

15198-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V. SOUTH EAST NORFOLK DISTRICT HIGH SCHOOL BOARD (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS D.B. ARCHER AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: FRED H. PYKE FOR THE APPLICANT, AND NO ONE APPEARING FOR THE RESPONDENT.

DECISION OF O.B. SHIME, VICE-CHAIRMAN, FOR THE MAJORITY AND DISSENTING DECISIONS OF BOARD MEMBERS D.B. ARCHER AND J.E. C. ROBINSON. DECEMBER 31, 1968.

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2. NO STATEMENTS OF OBJECTIONS OR DESIRE TO MAKE REPRESENTATIONS HAS BEEN FILED WITH THE BOARD WITHIN THE TIME FIXED UNDER SUB-SECTION 3 OF SECTION 42 OF THE BOARD'S RULES OF PROCEDURE FOLLOWING THE SERVICE OF THE REPORT OF THE EXAMINER DATED NOVEMBER 21ST, 1968, IN THIS MATTER.

3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF SOUTH EAST NORFOLK DISTRICT HIGH SCHOOL BOARD ENGAGED IN MAINTENANCE SERVICES AND PLANT OPERATIONS, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN AND OFFICE STAFF CONSTITUTE A UNIT OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.
4. HAVING REGARD TO THE AGREEMENT OF THE PARTIES AS CONTAINED IN THE EXAMINER'S REPORT THE BOARD FINDS THAT MORLEY BRANDOW, HARRY CULVER, ROBERT DALBY, BERT DAVIES, FRED HOLDEN, GILBERT MCAINSH, ROBERT MATTHEWS, GEORGE F. STEERS, GEORGE STEVENS, JOHN STOLL AND GERRIT VANTRIGHT ARE INCLUDED IN THE BARGAINING UNIT.
5. HAVING REGARD TO THE EVIDENCE IN THE EXAMINER'S REPORT THE BOARD FINDS THAT RICHARD BYL, GUS DE PAUW, CLINTON G. RYERSE AND TOM FRASER ARE INCLUDED IN THE BARGAINING UNIT.
6. HAVING REGARD TO THE EXAMINER'S REPORT WITH RESPECT TO MR. STANLEY MILLER A MAJORITY OF THE BOARD FINDS THAT MR. STANLEY MILLER EXERCISES SUPERVISION AND DIRECTION OVER OTHER EMPLOYEES WHICH HAS AT LEAST ON ONE OCCASION RESULTED IN HIS EXERCISING HIS OWN DISCRETION TO DISCHARGE AN EMPLOYEE. HAVING REGARD TO THE NATURE AND QUALITY OF THAT SUPERVISION AND DIRECTION WE FIND THAT MR. STANLEY MILLER EXERCISES MANAGERIAL FUNCTIONS AND ACCORDINGLY IS NOT INCLUDED IN THE BARGAINING UNIT PURSUANT TO THE PROVISIONS OF SECTION 13(B) OF THE LABOUR RELATIONS ACT.
7. HAVING REGARD TO THE EXAMINER'S REPORT WITH RESPECT TO MR. LEN ANDERSON A MAJORITY OF THE BOARD FINDS THAT MR. ANDERSON'S DUTIES AND RESPONSIBILITIES ARE NOT INDEPENDENTLY EXERCISED AND THAT ANY SUPERVISION OR DIRECTION IS "INDIRECT" AND INCIDENTAL TO HIS MAIN FUNCTIONS WHICH ARE TO ATTEND THE BOILERS, CUT THE GRASS, AND SHOVEL THE SNOW. HAVING REGARD TO HIS DUTIES AND RESPONSIBILITIES WE FIND THAT MR. LEN ANDERSON DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 13(B) OF THE LABOUR RELATIONS ACT AND IS INCLUDED IN THE BARGAINING UNIT.
8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 17TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.
9. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

DECISION OF BOARD MEMBER D.B. ARCHER: DECEMBER 31, 1968.

1. I FIND THAT MR. STANLEY MILLER IS A 4TH CLASS ENGINEER AND SHOULD BE INCLUDED IN THE BARGAINING UNIT.

DECISION OF BOARD MEMBER J.E.C. ROBINSON: DECEMBER 31, 1968.

1. I DISSENT FROM THE DECISION OF MY COLLEAGUES WHEREIN THEY FIND THAT LEN ANDERSON SHOULD BE INCLUDED IN THE BARGAINING UNIT. MR. ANDERSON IS DESIGNATED BY THE RESPONDENT AS MAINTENANCE SUPER-INTENDENT. HAVING CONSIDERED THE EXAMINER'S REPORT AND THE EXAMINATION OF MR. LEN ANDERSON AND THE HEAD CARETAKER, MR. GERALD KARGES, INsofar AS THE LATTER'S EXAMINATION RELATES TO THE DUTIES AND RESPONSIBILITIES OF MR. ANDERSON, I WOULD FIND THAT MR. LEN ANDERSON EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 13(B) OF THE LABOUR RELATIONS ACT AND I WOULD HAVE EXCLUDED HIM FROM THE BARGAINING UNIT.

15235-68-R: UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) (APPLICANT) V. ITT CANADA LTD. (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND O. HODGES.

APPEARANCES AT THE HEARING: B.H. STEWART, JOHN MACKAY, CLAUDE PARENT FOR THE APPLICANT, R. RUSSELL, M. GULLIFORD FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 23, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION.

2. THE RESPONDENT SUBMITTED "THAT THERE IS NO APPROPRIATE BARGAINING UNIT; THAT THE APPLICATION IS PREMATURE AND SHOULD BE DISMISSED; AND THAT PERSONS ON WHOSE BEHALF THE APPLICANT SEEKS BARGAINING RIGHTS CONSTITUTE NEITHER A SUBSTANTIAL NOR REPRESENTATIVE SEGMENT OF THE WORK FORCE TO BE EMPLOYED".

3. INTERNATIONAL TELEPHONE AND TELEGRAPH CORP. HAS CONDUCTED VARIOUS MANUFACTURING OPERATIONS THROUGHOUT CANADA. THE TWO OPERATIONS RELEVANT TO THE PRESENT APPLICATION ARE CARRIED ON BY ITT CANADA LIMITED (HEREINAFTER REFERRED TO AS "ITT CANADA") AND GENERAL CONTROLS (CANADIAN) LTD., (HEREINAFTER REFERRED TO AS "GENERAL CONTROLS").

4. GENERAL CONTROLS HAS CARRIED ON BUSINESS IN GUELPH, ONTARIO AND THROUGH VARIOUS DIVISIONS HAS MANUFACTURED RESIDENTIAL AND INDUSTRIAL CONTROLS, AUTOMATIC CONTROL VALVES, CIRCULATING PUMPS AND COMPRESSORS, INDUSTRIAL PUMPS, AND PROCESS INSTRUMENTS. ITT CANADA HAS CARRIED ON BUSINESS IN MONTREAL MANUFACTURING COMMUNICATIONS EQUIPMENT.

5. IN 1967 INTERNATIONAL TELEPHONE AND TELEGRAPH CORP. DECIDED TO AMALGAMATE THE AFORESAID COMPANIES BY DECEMBER 31ST, 1968 PURSUANT TO THE CORPORATIONS ACT R.S.C. 1964-65, s. 128A AND TO CENTRALIZE AND INTEGRATE ITS MANUFACTURING OPERATIONS ON THAT DATE. TO THAT END, IT WAS AGREED TO LOCATE BOTH MANUFACTURING OPERATIONS AT THE GENERAL CONTROLS PLANT IN GUELPH AND TO ENLARGE THE EXISTING PLANT FROM 45,000 SQUARE FEET TO 105,000 SQUARE FEET. ITT CANADA IS PRESENTLY CLOSING ITS MONTREAL OPERATION AND WILL TERMINATE ITS LEASE AT MONTREAL ON DECEMBER 31ST, 1968. SOME OF ITS MONTREAL EMPLOYEES HAVE TRANSFERRED TO GUELPH AND ARE LOCATED IN VARIOUS QUARTERS THERE.

6. IN ORDER TO STAFF ITS PRODUCTION OPERATIONS IN GUELPH, ITT CANADA FORMULATED A TRAINING PROGRAMME IN CO-OPERATION WITH THE FEDERAL DEPARTMENT OF MANPOWER AND IMMIGRATION AND THE ONTARIO DEPARTMENT OF LABOUR AND THEN HIRED PERSONS AND SUPPLIED INSTRUCTORS FOR THEIR TRAINING AT 211 DAWSON ROAD WHICH IS A TEMPORARY LOCATION. THESE PERSONS HAVE RECEIVED CLASSROOM INSTRUCTION AND ARE PRESENTLY PRODUCING COMMUNICATIONS EQUIPMENT AT 211 DAWSON ROAD WHICH THE RESPONDENT ALLEGES IS PART OF THE "ON-THE-JOB" TRAINING BUT WHICH THE APPLICANT DENIES. AT THE TIME OF THE APPLICATION AND THE HEARING, WITH THE EXCEPTION OF TWO CLERKS, IN THE SHIPPING AND RECEIVING DEPARTMENT, THE TEMPORARY QUARTERS AT 211 DAWSON ROAD DID NOT CONTAIN ANY OF THE DEPARTMENTS NORMALLY INCIDENTAL TO A PRODUCTION FACILITY, I.E. MAINTENANCE, REPAIR, WAREHOUSING PAINTING AND MACHINE SHOP, NOR DID IT CONTAIN ANY OF THE ACCOUNTING, ENGINEERING, PURCHASING, SALES OR ADMINISTRATIVE STAFFS NORMALLY ASSOCIATED WITH A PRODUCTION FACILITY.

7. THE ITT CANADA OPERATIONS AT MONTREAL AND THE VARIOUS TEMPORARY QUARTERS AT GUELPH ARE GRADUALLY MOVING INTO THE EXISTING AND ENLARGED BUILDING AT 171-175 DAWSON ROAD; THE MOVE WILL BE COMPLETED BY DECEMBER 31ST, 1968.

8. EVIDENCE WAS ADDUCED THAT THE AMALGAMATION OF GENERAL CONTROLS AND ITT CANADA WOULD BE COMPLETED BY DECEMBER 31ST, 1968 AND AT THAT TIME THE NEW COMPANY (HEREINAFTER REFERRED TO AS THE "AMALGAMATED COMPANY") WOULD COME INTO EXISTENCE.

9. AT THE NEW PLANT IT IS ANTICIPATED THAT INTEGRATION BETWEEN GENERAL CONTROLS AND ITT CANADA WILL OCCUR IN THE MAINTENANCE, REPAIR,

SHIPPING, RECEIVING, WAREHOUSING, PAINTING, AND THE MACHINE SHOP AND THAT THE FACILITIES OF THE CAFETERIA PAYROLL, FIRST AID, AND PERSONNEL DEPARTMENTS WILL BE COMMON TO ALL EMPLOYEES. IN ADDITION, IT IS THE INTENTION OF THE OFFICERS OF THE RESPONDENT COMPANY TO MAINTAIN A COMMON PERSONNEL POLICY.

10. THE EMPLOYEES OF GENERAL CONTROLS ARE PRESENTLY COVERED BY AN EXISTING COLLECTIVE AGREEMENT WITH THE UNITED STEELWORKERS OF AMERICA WHICH EXPIRES MAY 1ST, 1969 AND WHICH COVERS "ALL EMPLOYEES AT GUELPH, ONTARIO, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF AND PLANT GUARDS".

11. THE APPLICANT SEEKS TO BE CERTIFIED WITH RESPECT TO CERTAIN EMPLOYEES WHO ARE NOW EMPLOYED BY ITT CANADA AT GUELPH AND PARTICULARLY "ALL EMPLOYEES OF THE RESPONDENT COMPANY IN GUELPH (ITT CANADA), SAVE AND EXCEPT FOREMEN, THOSE ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF". THE THRUST OF THEIR APPLICATION IS DIRECTED TO OBTAINING A NORMAL INDUSTRIAL UNIT BASED ON UNION MEMBERSHIP RESTRICTED TO THOSE EMPLOYEES WHO ARE PRESENTLY AT 211 DAWSON ROAD.

12. THE RESPONDENT CONCEDED THAT PERSONS PRESENTLY AT 211 DAWSON ROAD WERE EMPLOYEES BUT ARGUED THAT A SPECIAL STATUS WAS ACQUIRED BY THESE EMPLOYEES DURING THE TRAINING PROGRAMME AND AS A RESULT THESE EMPLOYEES WERE PRECLUDED FROM COLLECTIVE BARGAINING. THE RESPONDENT ADDUCED EVIDENCE THAT THE TRAINING PERIOD WAS FOR A PERIOD OF 6 MONTHS WITH 11 WEEKS DEVOTED TO CLASSROOM OR VESTIBULE TRAINING AND THE REMAINING TIME TO CONSIST OF "ON-THE-JOB" TRAINING WITH AN EXAMINATION TO BE HELD AT THE END OF SIX MONTHS. THE FIRST GROUP OF TRAINEES CONSISTING OF 45 PERSONS WAS EMPLOYED ON JUNE 24TH, 1968 AND THE SECOND GROUP OF 25 PERSONS WAS EMPLOYED IN AUGUST OF 1968. AT THE TIME OF THE APPLICATION THERE WERE 61 EMPLOYEES AND 10 EMPLOYEES WHO WERE NOT TRAINEES. THE APPLICANT ADDUCED EVIDENCE THAT THE TRAINING PERIOD WAS FOR ONLY 6 WEEKS AND THAT SUBSEQUENTLY THOSE PERSONS WERE EMPLOYED IN ACTUAL PRODUCTION.

13. IN SUPPORT OF ITS ARGUMENT THE RESPONDENT CITED INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION No. 2038 AND ITT CANADA LIMITED (UNREPORTED) A DECISION OF THE SASKATCHEWAN LABOUR RELATIONS BOARD AND INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 V. THE QUEEN ELIZABETH HOSPITAL, TORONTO 1968 JULY MONTHLY REPORT, O.L.R.B. PAGE 316. IN THE SASKATCHEWAN CASE, THE EMPLOYEES WERE TAKING A TRAINING COURSE AND WERE BEING PAID A LIVING ALLOWANCE THAT WAS IN PART PAID BY THE GOVERNMENT AND IN PART BY THE RESPONDENT. THERE WERE OTHER SHARING ARRANGEMENTS CONCERNING THE INSTRUCTORS.

THE REASONS OF THE BOARD STATE: "IT WAS THE MAJORITY OF THE BOARD'S OPINION THAT IN VIEW OF THE SHARING ARRANGEMENTS AS TO LIVING ALLOWANCE AND INSTRUCTION DURING THE TRAINING PERIOD THAT THE PERSONS IN TRAINING IRRESPECTIVE OF THEIR STATUS AS EMPLOYEES, COULD NOT BE CONSIDERED AS PART OF A UNIT APPROPRIATE FOR THE PURPOSE OF COLLECTIVE BARGAINING. THEIR SPECIAL STATUS WHICH EXISTED FOR SUCH A LIMITED PERIOD OF TIME AT THE OUTSET OF THEIR ASSOCIATION WITH THE RESPONDENT COMPANY COULD NOT IN THE MAJORITY OF THE BOARD'S OPINION QUALIFY THEM AS A CLASSIFICATION THAT SHOULD BE INCLUDED IN THE BARGAINING UNIT". A SIMILAR SITUATION WITH RESPECT TO COMPENSATION EXISTED IN THE QUEEN ELIZABETH HOSPITAL CASE. IN THAT CASE A MR. T. SCHMELLAR HAD BEEN WORKING IN THE RESPONDENT COMPANY'S BOILER ROOM PURSUANT TO AN ARRANGEMENT BETWEEN THE RESPONDENT COMPANY AND THE WORKMEN'S COMPENSATION BOARD. THIS ARRANGEMENT WAS PART OF THE WORKMEN'S COMPENSATION BOARD'S REHABILITATION AND TRAINING PROGRAMME AND MR. SCHMELLAR ADMITTED THAT HE KNEW HE WAS NOT AN EMPLOYEE BUT WAS THERE TO LEARN A TRADE.

14. THE INSTANT CASE CAN BE READILY DISTINGUISHED FROM BOTH THE AFORESAID CASES. IN THE INSTANT CASE THE EMPLOYEES ARE PAID DIRECTLY BY THE RESPONDENT COMPANY WITH THE COMPANY BEING INDEMNIFIED BY THE GOVERNMENT. THE EMPLOYEES ALSO HAVE RECEIVED A RAISE FROM THE RESPONDENT, ARE MANUFACTURING PRODUCTS THAT ARE BEING SOLD TO THE PUBLIC AND ARE WORKING OVERTIME IN ORDER TO ENABLE DELIVERY IN CONNECTION WITH A LARGE CONTRACT UNDERTAKEN BY THE RESPONDENT WHICH IS TO BE COMPLETED BY DECEMBER 15TH, 1968. IF WE WERE TO ACCEPT THE RESPONDENT'S ARGUMENT IT WOULD MEAN THAT ANY PERSONS WHO WERE INVOLVED IN SUCH A LEARNING SITUATION WOULD BE PRECLUDED FROM COLLECTIVE BARGAINING NOTWITHSTANDING THEIR STATUS AS EMPLOYEES. ACCORDINGLY, WE FIND THAT IN THESE CIRCUMSTANCES THE EMPLOYEES AT 211 DAWSON ROAD ARE ELIGIBLE AS EMPLOYEES FOR COLLECTIVE BARGAINING IN AN APPROPRIATE UNIT.

15. IT NOW BECOMES ESSENTIAL TO DETERMINE WHETHER THE UNIT APPLIED FOR IS APPROPRIATE. THE MAIN PRODUCTION FACILITY IS IN OPERATION BUT IT IS ONLY A BALD OPERATION AND NONE OF THE OPERATIONS THAT ARE NORMALLY INCIDENTAL TO A PRODUCTION FACILITY SUCH AS PAINTING, REPAIR, MAINTENANCE, WAREHOUSING AND MACHINE SHOP ARE PRESENT. THE EVIDENCE INDICATES THAT THE PRESENT SITUATION AT 211 DAWSON ROAD IS BOTH TEMPORARY AND TRANSITIONAL, THAT THE PRESENT PRODUCTION FACILITY IS INCOMPLETE, AND THAT IT WILL MOVE TO THE NEW PLANT ON DECEMBER 31ST, 1968 WHERE IT WILL BE INTEGRATED WITH THOSE OPERATIONS WHICH ARE NORMALLY INCIDENTAL TO A PRODUCTION FACILITY. THE EMPLOYEES IN THE PRESENT PRODUCTION FACILITY AND ASSOCIATED OPERATIONS WILL BE INCREASED IN ACCORDANCE WITH A PLANNED PROGRAMME.

IN ADDITION TO THE INTEGRATION OF THE PRODUCTION FACILITY WITH THE NORMALLY INCIDENTAL OPERATIONS, THOSE INCIDENTAL OPERATIONS WILL BE INTEGRATED WITH CORRESPONDING DEPARTMENTS OF GENERAL CONTROLS. HAVING REGARD TO ALL THE CIRCUMSTANCES AND PARTICULARLY THE EMBRYONIC NATURE OF THE SITUATION AT 211 DAWSON ROAD WE FIND THAT ANY BARGAINING UNIT ESTABLISHED AT PRESENT WOULD BE INAPPROPRIATE.

16. EVEN IF WE ATTEMPTED TO PROJECT THIS SITUATION WE COULD NOT PROPERLY FASHION A BARGAINING UNIT BASED ON THE PRESENT PRODUCTION FACILITY AND THE CONTEMPLATED INCIDENTAL OPERATIONS BECAUSE OF THE INTEGRATION OF THESE INCIDENTAL DEPARTMENTS WITH THE CORRESPONDING DEPARTMENTS OF GENERAL CONTROLS. AS WE ARE PRESENTLY UNABLE TO DETERMINE THE EXTENT OF THE INTEGRATION OF THE COMMON DEPARTMENTS WE ARE UNABLE TO DEFINE THE BOUNDARIES OF AN APPROPRIATE BARGAINING UNIT.

17. ASSUMING THAT THE PRESENT UNIT IS APPROPRIATE THE RESPONDENT ARGUED THAT THE APPLICATION IS PREMATURE AND PRESENTED EVIDENCE INDICATING THAT THE PRESENT WORK FORCE ENGAGED IN THE COMMUNICATION OPERATIONS WILL BE AUGMENTED IN ACCORDANCE WITH A PLANNED PROGRAMME; THAT THIS BUILD-UP WOULD TAKE PLACE WITHIN A SPECIFIED PERIOD AND THAT THE RESPONDENT'S INTENTION AS THE PRESENT EMPLOYEES BECOME MORE SKILLFUL IS TO INCREASE AND REFINER THE OCCUPATIONAL CLASSIFICATION TO ACCOMMODATE THE MORE DEVELOPED SKILLS.

18. THE BOARD HAS ATTEMPTED TO BALANCE THE RIGHT OF PERSONS PRESENTLY EMPLOYED TO COLLECTIVE BARGAINING WITH THE RIGHT OF FUTURE EMPLOYEES TO SELECT A BARGAINING AGENT OF THEIR OWN CHOICE. INTERNATIONAL UNION UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) AND MCCORD CORPORATION 1965 JUNE MONTHLY REPORT, O.L.R.B. P. 203; LOCAL 2693, LUMBER AND SAWMILL WORKERS UNION UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AND EMIL FRANT AND PETER WASELOVICH (CNR FORT FRANCES, PORT ARTHUR LINE) 57 CLLC, 618, C.L.S. 76-539; TEXTILE WORKERS UNION OF AMERICA, CLC-AFL-CIOV. HARDING BRANTFORD LIMITED V. THE CANADIAN TEXTILE COUNCIL LOCAL 501, 1966 JULY MONTHLY REPORT, O.L.R.B. P. 245. IN THESE CASES THE BOARD HAS POSTPONED ITS FINAL DETERMINATION AND ORDERED THE PARTIES TO REPORT TO THE BOARD AT A FUTURE DATE FOR THE PURPOSE OF ORDERING A REPRESENTATION VOTE OR HAS ORDERED A REPRESENTATION VOTE AT A FUTURE DATE.

19. WE HAVE CONSIDERED FOLLOWING OUR USUAL PRACTICE, HOWEVER, THE SPECIAL CIRCUMSTANCES OF AMALGAMATION IN THIS CASE INDICATE THE FUTILITY OF THAT COURSE OF ACTION. IN THAT CONNECTION IT IS NECESSARY TO SET OUT IN PART S. 128A OF THE COMPANIES ACT R.S.C. 1964-1965:

(1) ANY TWO OR MORE COMPANIES INCORPORATED UNDER THIS ACT, INCLUDING HOLDING AND SUBSIDIARY COMPANIES, MAY AMALGAMATE AND CONTINUE AS ONE COMPANY

(13) UPON THE ISSUE OF LETTERS PATENT PURSUANT TO SUBSECTION (11), THE AMALGAMATION AGREEMENT HAS FULL FORCE AND EFFECT AND

(A) THE AMALGAMATING COMPANIES ARE AMALGAMATED AND ARE CONTINUED AS ONE COMPANY (IN THIS SECTION CALLED THE "AMALGAMATED COMPANY") UNDER THE NAME AND HAVING THE AUTHORIZED CAPITAL AND OBJECTS SPECIFIED IN THE AMALGAMATION AGREEMENT; AND

(B) THE AMALGAMATED COMPANY POSSESSES ALL THE PROPERTY, RIGHTS, ASSETS, PRIVILEGES AND FRANCHISES, AND IS SUBJECT TO ALL THE CONTRACTS, LIABILITIES, DEBTS AND OBLIGATIONS OF EACH OF THE AMALGAMATING COMPANIES.

IN REGINA V. BEAMISH 59 D.L.R. (2d) 6; 1966 2 O.R. 867; 1967 1 C.C.C. 301 IN DEALING WITH A SECTION IN THE ONTARIO CORPORATIONS ACT, R.S.O. 1960 C.71 SIMILAR TO SECTION 128A, JESSUP, J. CONSIDERED WHETHER A CORPORATION HAS CEASED TO EXIST AS A CORPORATE ENTITY SUBSEQUENT TO AMALGAMATION. HE CONCLUDED:

"I REACHED THE CONCLUSION... THAT THE AMALGAMATING COMPANY IN WHOSE ENTITY THE AMALGAMATING COMPANIES CONTINUE UNDER SECTION 96(4), IS A SEPARATE ENTITY AND THAT THE AMALGAMATING COMPANIES CEASE TO HAVE ENTITY OR IDENTITY ONCE AMALGAMATION IS ACCOMPLISHED."

21. WE FIND THAT AFTER DECEMBER 31st, 1968 AS A RESULT OF THE AMALGAMATION OF GENERAL CONTROLS AND ITT CANADA PURSUANT TO SECTION 128A THAT THERE WILL BE A SEPARATE ENTITY WHICH IS NOT A PARTY TO THESE PROCEEDINGS AND IT IS DOUBTFUL THAT ANY DIRECTION OR ORDER OF THIS BOARD WOULD BE BINDING ON THAT ENTITY. WE REALIZE THAT WE HAVE CONSIDERED EVIDENCE THAT A BUILD UP OF THE WORK FORCE WILL TAKE PLACE IN THE AMALGAMATED COMPANY WHICH IS A SEPARATE ENTITY AND HAS NOT YET COME INTO EXISTENCE. ALTHOUGH THE PRESENT COMPANY CEASES AS A LEGAL ENTITY AND A SEPARATE ENTITY WILL COME INTO EXISTENCE SUBSEQUENT TO DECEMBER 31st, 1968, WE ARE CONCERNED WITH THAT CONCEPT AS A QUESTION ONLY OF STATUS. THE EFFECT OF THE BEAMISH CASE WAS TO DENY STATUS FOR THE PURPOSES OF A CRIMINAL PROSECUTION AND IN OUR VIEW THE QUESTION OF AN ORDER OF THE BOARD BEING BINDING ON THAT SEPARATE ENTITY IS ALSO A QUESTION OF STATUS. WE FIND THAT THERE WILL BE A CONTINUATION IN A PRACTICAL BUSINESS SENSE WHICH HAS ALLOWED THE BOARD TO ASSESS THE BUILD UP. BY PROCEEDING IN THIS MANNER WE ARE GIVING EFFECT TO THE CONCEPT OF CONTINUATION WHICH IS PATENTLY REFLECTED IN SECTION 128A.

22. THE APPLICANT HAS ALSO CITED A NUMBER OF CASES IN ANSWER TO THE RESPONDENT'S ARGUMENT WHICH WE PROPOSE TO DEAL WITH. IN DAVID SPENCER LIMITED COURTENAY B.C. AND RETAIL CLERKS UNION, LOCAL 1539 1947 D.L.S. W.L.R.B. 7-691 ON APPEAL FROM THE MINISTER OF LABOUR FOR BRITISH COLUMBIA THE COMPANY SUBMITTED THAT AT THE TIME OF CERTIFICATION IT WAS ENGAGED UPON PLANS FOR THE ENLARGEMENT OF THE STORES OPERATIONS AND THAT IN THE PROCESS OF RE-ORGANIZATION THERE HAS BEEN AN ALMOST COMPLETE CHANGE IN STAFF PERSONNEL. THE COMPANY SUBMITTED THAT THE CERTIFICATION PROCEEDINGS WERE PREMATURE IN THE CIRCUMSTANCES AND THAT THE MINISTER SHOULD HAVE DEFERRED FINAL DISPOSITION OF THE APPLICATION FOR CERTIFICATION PENDING THE TIME WHEN THE STORE RE-ORGANIZATION IS COMPLETED AND AT THAT TIME A VOTE SHOULD BE ORDERED. THE MINISTER CONSIDERED THAT THE CIRCUMSTANCES DID NOT WARRANT A POSTPONEMENT OF THE DISPOSITION OF THE APPLICATION AND HIS DECISION WAS MADE FOLLOWING THE REPORT OF THE INVESTIGATING OFFICER THAT THE MAJORITY OF EMPLOYEES IN THE UNIT WERE MEMBERS OF THE RESPONDENT UNIT AT THE TIME OF THE INVESTIGATION AND CERTIFICATION WAS GRANTED ACCORDINGLY. THE COMPANIES APPEAL WAS DISMISSED BY THE MARITIME LABOUR RELATIONS BOARD.

23. THE FACTS OF THAT CASE ARE SPARSELY REPORTED BUT IT APPEARS FROM THE CASE THAT THE COMPANY "WAS ENGAGED UPON PLANS" AND AT THE TIME OF THE APPLICATION THERE WAS NO EVIDENCE PRESENTED SHOWING A PLANNED PROGRAMME WITH A REAL LIKELIHOOD OF AN INCREASE TAKING PLACE WITHIN A SPECIFIED PERIOD AS IN THE HARDING CARPETS CASE, SUPRA.

24. IN INTERNATIONAL UNION OF ELECTRICAL RADIO AND MACHINE WORKERS AFL, CIO, CLC V. R.C.A. VICTOR COMPANY LIMITED. V. UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA UE INTERVENER, 1967 JANUARY MONTHLY REPORT O.L.R.B. P. 793 ALSO CITED BY THE APPLICANT THIS BOARD SAID:

"THAT THE PRODUCTION SCHEDULE ORIGINALLY ESTABLISHED FOR 1967 HAS BEEN REDUCED. FURTHER, HIRING OF NEW EMPLOYEES, WHEN IT DOES TAKE PLACE, WILL BE DONE OVER A PROTRACTED PERIOD OF TIME,..."

AND "...IT IS NOT EXPECTED THAT THIS BUILD UP WOULD LEAD TO THE EMPLOYMENT FORCE OF 300 TO 400, WHICH IS ONLY TO BE ACHIEVED IN THE MORE DISTANT FUTURE."

IN DISMISSING THE INTERVENER'S OBJECTION THAT THE APPLICATION WAS PREMATURE THE BOARD CONCLUDED "HAVING REGARD TO THE ABOVE CONSIDERATIONS AND IN PARTICULAR TO THE FACT THAT THERE IS NO FIRM SCHEDULE FOR THE HIRING OF VERY SUBSTANTIAL NUMBER OF EMPLOYEES...THE BOARD

IS NOT SATISFIED THAT THERE IS A REAL LIKELIHOOD THAT AN INCREASE IN THE WORK FORCE WILL TAKE PLACE WITHIN A REASONABLE PERIOD OF TIME". IN THE INSTANT CASE IT APPEARS THAT THERE IS A PLANNED PROGRAMME WITH A REAL LIKELIHOOD THAT AN INCREASE IN THE WORK FORCE WILL TAKE PLACE, AND THAT MORE THAN 50% OF THE WORK FORCE WILL BE EMPLOYED BY JANUARY 19TH, 1969 WHICH WOULD ENABLE A REPRESENTATION VOTE WITHIN A REASONABLE TIME. McCord Corporation Case, SUPRA. ACCORDINGLY, THE INSTANT CASE IS DISTINGUISHABLE FROM THOSE CITED.

25. THE APPLICANT HAS CITED A NUMBER OF CASES WHERE IT APPEARS THAT THE WORK FORCES GREATLY INCREASED SUBSEQUENT TO THE DATE OF APPLICATION. IN ALL OF THESE CASES THE ISSUE OF PRE-MATURITY DOES NOT APPEAR TO HAVE BEEN RAISED AND ACCORDINGLY WE FIND THAT THEY ARE NOT APPLICABLE TO THE PRESENT SITUATION. SEE NORTHERN ELECTRIC EMPLOYEE ASSOCIATION V. NORTHERN ELECTRIC COMPANY LIMITED O.L.R.B. FILE NO. 2203-61-R; UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA (UE) AND NORTHERN ELECTRIC COMPANY LIMITED AND NORTHERN ELECTRIC EMPLOYEES ASSOCIATION (INTERVENER) O.L.R.B. FILE NO. 5493-62-R; NORTHERN ELECTRIC OFFICE EMPLOYEES ASSOCIATION AND NORTHERN ELECTRIC COMPANY LIMITED O.L.R.B. FILE NO. 4433-62-R; INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA UAW AND NORTHERN ELECTRIC COMPANY LIMITED AND NORTHERN ELECTRIC EMPLOYEES ASSOCIATION (INTERVENER) O.L.R.B. FILE NO. 14008-67-R.

26. HAVING REGARD TO THE APPROPRIATENESS OF THE BARGAINING UNIT AND THE CONCEPT OF BUILD UP IT IS OUR VIEW THAT IN ALL THE SPECIAL CIRCUMSTANCES OF THIS CASE THAT THIS APPLICATION IS PREMATURE. WE WISH TO POINT OUT THAT IN DISMISSING THE APPLICATION WE ARE SPECIFICALLY MAKING NO FINDING AS TO THE APPLICATION OR EXTENSION OF THE EXISTING AGREEMENT BETWEEN THE STEELWORKERS AND GENERAL CONTROLS TO THE EMPLOYEES OF ITT CANADA SUBSEQUENT TO THE AMALGAMATION.

27. THE APPLICATION IS THEREFORE DISMISSED.

15241-68-R: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO: CLC (APPLICANT) V. NIAGARA FRONTIER CATERERS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND O. HODGES.

DECISION OF THE BOARD: DECEMBER 11, 1968.

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3. THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT ST. CATHARINES, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD AND PERSONS COVERED UNDER A SUBSISTING COLLECTIVE AGREEMENT BETWEEN THE APPLICANT AND THE RESPONDENT.

4. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES FOLLOWING THE REPORT OF THE EXAMINER, THE BOARD NOTES THEIR AGREEMENT THAT PETER UKROENZ EXERCISES MANAGERIAL FUNCTIONS AND IS NOT INCLUDED IN THE BARGAINING UNIT DESCRIBED ABOVE.

5. THE REMAINING TWO EMPLOYEES WHOSE DUTIES AND RESPONSIBILITIES WERE EXAMINED WERE JOHN HUBENY AND ANNA ONYSKIW. THE BOARD HAS CONSIDERED ALL THE EVIDENCE CONTAINED IN THE REPORT OF THE EXAMINER AND FINDS ON THE EVIDENCE THAT WHILE JOHN HUBENY EXERCISES SOME FUNCTIONS RELATED TO SUPERVISION, SUCH ARE INCIDENTAL TO HIS MAIN DUTIES OF WORKING IN THE BAKERY AND HE DOES NOT EXERCISE MANAGERIAL FUNCTIONS WITHIN THE MEANING OF SECTION 1(3)(B) OF THE LABOUR RELATIONS ACT AND IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT.

6. DEALING WITH THE EVIDENCE WITH RESPECT TO ANNA ONYSKIW WHO IS IN CHARGE OF THE KITCHEN, IT APPEARS THAT SHE HAS CERTAIN FUNCTIONS OF A SUPERVISORY NATURE WITH RESPECT TO THE SIX OTHER PERSONS IN THE KITCHEN WHO WORK WITH HER. ON HER EVIDENCE, HOWEVER, IT BECOMES CLEAR THAT THE EFFECTIVE CONTROL AND AUTHORITY OF THESE EMPLOYEES IS EXERCISED IN THE MAIN BY MR. REINEKS, THE PLANT MANAGER, TO WHOM SHE REPORTS. CERTAINLY, FOR THE MAJORITY OF HER TIME SHE IS ENGAGED IN WORK SIMILAR TO THAT PERFORMED BY OTHERS INCLUDED IN THE BARGAINING UNIT AND DURING THE COURSE OF THIS TYPE OF WORK IS INVOLVED IN THE OPERATION OF THE KITCHEN. IN ASSESSING THEREFORE HER ENTIRE RELATIONSHIP WITH THE RESPONDENT AND THE OTHER EMPLOYEES WE ARE NOT SATISFIED THAT SHE EXERCISES MANAGERIAL FUNCTIONS WITHIN THE MEANING OF THE ACT. ACCORDINGLY, WE FIND THAT SHE IS AN EMPLOYEE OF THE RESPONDENT INCLUDED IN THE BARGAINING UNIT. FOR REFERENCE SEE FALCONBRIDGE NICKEL MINES LIMITED CASE, O.L.R.B. MONTHLY REPORT, SEPTEMBER 1966, PAGE 379.

7. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT NOT LESS THAN FORTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 28TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

8. A REPRESENTATION VOTE WILL BE TAKEN AMONG THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT. ALL EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT ON THE DATE HEREOF WHO DO NOT VOLUNTARILY TERMINATE THEIR EMPLOYMENT OR WHO ARE NOT DISCHARGED FOR CAUSE BETWEEN THE DATE HEREOF AND THE DATE THE VOTE IS TAKEN WILL BE ELIGIBLE TO VOTE.

9. VOTERS WILL BE ASKED TO INDICATE WHETHER OR NOT THEY WISH TO BARGAIN COLLECTIVELY THROUGH THE APPLICANT.

10. THE MATTER IS REFERRED TO THE REGISTRAR.

15243-68-R: INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (UAW) (APPLICANT) V. FISHER GOVERNOR COMPANY OF CANADA LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: ROBERT WHITE AND CARL ANDERSON FOR THE APPLICANT, B.H. STEWART, D. ESTILL AND J.L. MCKERRAL FOR THE RESPONDENT, A. MILLARD, G. DIXON, G. MASON AND R. PHILLIPS FOR THE OBJECTORS.

DECISION OF THE BOARD: DECEMBER 10, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THERE WAS FILED, IN OPPOSITION TO THIS APPLICATION, STATEMENTS OF DESIRE SIGNED BY CERTAIN EMPLOYEES OF THE RESPONDENT.

2. WHEN THE BOARD COMMENCED ITS INQUIRY INTO THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED AND THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED ON THE STATEMENTS OF OBJECTION, COUNSEL FOR THE RESPONDENT REQUESTED THE BOARD TO PERMIT THE RESPONDENT TO SUBMIT ITS QUESTIONS TO THE WITNESSES AFTER COUNSEL FOR THE OBJECTORS AND COUNSEL FOR THE APPLICANT HAD SUBMITTED THEIR QUESTIONS. OVER THE OBJECTION OF COUNSEL FOR THE RESPONDENT, THE BOARD DENIED THE RESPONDENT'S REQUEST. THE BOARD, IN ACCORDANCE WITH ITS USUAL PRACTICE IN SIMILAR CASES, DIRECTED THAT AFTER THE BOARD HAS ASKED ITS USUAL QUESTIONS OF EACH OF THE WITNESSES CONCERNING THE WITNESSES PERSONAL KNOWLEDGE OF THE ORIGINATION, PREPARATION AND CIRCULATION OF THE MATERIAL FILED BY THE OBJECTORS, COUNSEL FOR THE OBJECTORS WOULD BE GIVEN FIRST OPPORTUNITY TO ASK THE BOARD TO DIRECT ADDITIONAL QUESTIONS TO THE WITNESSES; COUNSEL FOR THE RESPONDENT WOULD THEN BE GIVEN A SIMILAR OPPORTUNITY AND COUNSEL FOR

THE APPLICANT WOULD BE GIVEN AN OPPORTUNITY TO REQUEST THE BOARD TO PUT FURTHER QUESTIONS TO THE WITNESSES. FINALLY, COUNSEL FOR THE OBJECTORS WOULD BE GIVEN A LAST OPPORTUNITY TO ASK THE BOARD TO PUT QUESTIONS TO THE WITNESSES WHICH MIGHT ARISE OUT OF THE QUESTIONS ASKED BY THE OTHER TWO PARTIES.

3. IF THE BOARD WERE TO ACCEDE TO THE RESPONDENT'S REQUEST, SUCH PROCEDURE WOULD BE PUTTING THE RESPONDENT IN THE POSITION OF A PRIME DEFENDER OF THE VALIDITY OF THE STATEMENTS OF OBJECTIONS. SINCE ONE OF THE BOARD'S MAIN CONCERNS IN MAKING INQUIRIES CONCERNING PETITIONS IS TO ASCERTAIN WHETHER MANAGEMENT HAD A DIRECT HAND IN FORMING THE WISHES OF THE EMPLOYEES AS EXPRESSED IN THE STATEMENTS OF DESIRE, IT WOULD BE INCONGRUOUS FOR THE BOARD TO ATTEMPT TO ASSESS EVIDENCE ADDUCED IN SUPPORT OF THE PETITIONS AND AT THE SAME TIME PERMIT THE RESPONDENT TO ASSUME THE ROLE AT THE HEARING OF A PRIME DEFENDER OF THE VALIDITY OF THE PETITIONS. IN SO STATING THE BOARD'S PRACTICE, WE DO NOT INTEND TO IMPLY THAT WE ARE NOT AWARE OF THE REALITIES OF THE SITUATION; FOR IT IS A RARE CASE INDEED WHERE A COMPANY WOULD NOT WISH TO HAVE A REPRESENTATION VOTE CONDUCTED RATHER THAN HAVE A UNION CERTIFIED WITHOUT THE CONFIRMATORY EVIDENCE OF A VOTE. HOWEVER THAT MAY BE, THE ONUS OF ESTABLISHING THAT THE MATERIAL FILED REPRESENTS A FREE EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES RESTS UPON THE OBJECTORS AND THIS ONUS CANNOT BE TRANSFERRED TO OR ASSUMED BY THE EMPLOYER WITHOUT CASTING SERIOUS DOUBT ON THE VALIDITY OF THE MATERIAL FILED.

4. AFTER ALL THE WITNESSES CALLED BY THE OBJECTORS IN SUPPORT OF THE PETITION HAD BEEN EXAMINED PURSUANT TO THE PROCEDURE OUTLINED ABOVE, THE RESPONDENT CALLED MR. MCKERRAL, THE RESPONDENT'S PERSONNEL MANAGER, TO EXPLAIN HIS PARTICIPATION IN THE ORIGINATION OF THE STATEMENTS OF OBJECTIONS. AFTER HEARING ALL THE EVIDENCE ADDUCED IN SUPPORT OF THE STATEMENTS OF OBJECTIONS, THE BOARD ADVISED THE PARTIES THAT IT WOULD POSTPONE HEARING THE EVIDENCE WHICH THE APPLICANT WISHED TO ADDUCE CONCERNING ITS ALLEGATIONS OF UNFAIR CONDUCT SURROUNDING THE ORIGINATION AND CIRCULATION OF THE PETITIONS AND REQUESTED THE PARTIES TO ADDRESS ARGUMENT TO THE BOARD AS TO WHAT WEIGHT SHOULD BE GIVEN TO THE STATEMENTS OF OBJECTIONS IN LIGHT OF THE EVIDENCE ADDUCED IN SUPPORT OF THE STATEMENTS.

5. THE EVIDENCE ADDUCED IN SUPPORT OF THE STATEMENTS OF OBJECTIONS MAY BE SUMMARIZED AS FOLLOWS. ON SEPTEMBER 20TH, 1968, THE APPLICANT HANDED OUT PAMPHLETS IN FRONT OF THE ENTRANCES TO THE RESPONDENT'S PLANT ANNOUNCING A UNION MEETING WHICH WAS TO BE HELD ON SUNDAY, SEPTEMBER 22ND. ON SEPTEMBER 23RD AND SEPTEMBER 24TH, THE RESPONDENT DISTRIBUTED ITS HOUSE ORGAN CALLED "FISHER RELAY" TO ITS EMPLOYEES WHEREIN, AMONG OTHER THINGS, A COMPARISON

WAS MADE BETWEEN WAGES PAID TO ITS EMPLOYEES AND THE EMPLOYEES IN TWO OTHER PLANTS WHERE THE APPLICANT HAPPENED TO HAVE COLLECTIVE AGREEMENTS. NOTHING IN THE FISHER RELAY COULD BE CHARACTERIZED AS UNDUE INFLUENCE OR UNFAIR OR OBJECTIONABLE COMMENT, EVEN IN THE LIGHT OF THE APPLICANT'S ATTEMPT TO ORGANIZE THE RESPONDENT'S EMPLOYEES.

6. ON SEPTEMBER 24TH, APPROXIMATELY FIVE EMPLOYEES, INCLUDING MR. PHILLIPS AND MR. MATTA, ATTENDED AT THE OFFICE OF MR. MCKERRAL WHEREIN THE APPLICANT'S ORGANIZATIONAL CAMPAIGN WAS DISCUSSED AND THE EMPLOYEES STATED THAT THEY WERE EXPERIENCING DIFFICULTY IN HAVING OTHER EMPLOYEES SIGN A PETITION IN OPPOSITION TO THE IMPENDING APPLICATION. MR. MCKERRAL INSPECTED THE HEADING ON THE DOCUMENT THAT THE EMPLOYEES HAD AND ADVISED THEM THAT THE OPPOSITION TO THE EMPLOYEES EFFORTS WAS UNDERSTANDABLE IN VIEW OF THE WORDING WHICH APPEARED ON THE PETITION THEY WANTED THEIR FELLOW EMPLOYEES TO SIGN. MR. MCKERRAL INDICATED THAT IT WOULD BE UNFAIR TO "PUT THE EMPLOYEES ON THE SPOT" BY HAVING THEM COMMIT THEMSELVES TO OPPOSE THE UNION. MR. MCKERRAL SUGGESTED THAT A PETITION SHOULD BE CIRCULATED WHEREIN THE EMPLOYEES WOULD ASK THAT THE LABOUR RELATIONS BOARD CONDUCT A SECRET BALLOT. FOLLOWING THIS DISCUSSION WITH MR. MCKERRAL, THE EMPLOYEES OPENLY CIRCULATED IN THE PLANT DOCUMENTS WHICH CONTAINED THE FOLLOWING HEADING:

WE THE UNDERSIGNED WOULD LIKE IT MADE KNOWN THAT,
IN THE EVENT THAT THE CERTIFICATION OF ANY UNION
SEEMS IMMINENT AT FISHER GOVERNOR COMPANY THAT WE
REQUEST THE SERVICES OF THE LABOUR RELATIONS BOARD
TO CONDUCT A SECRET BALLOT.

NINETY-FIVE SIGNATURES WERE OBTAINED ON THE DOCUMENTS CONTAINING THE ABOVE HEADING. THE DOCUMENTS ABOVE REFERRED TO WERE TYPED BY MR. MCKERRAL'S SECRETARY IN THE PRESENCE OF MR. MCKERRAL IN HIS OFFICE.

7. THE INSTANT APPLICATION WAS MADE ON OCTOBER 18TH, 1968 AND NOTICE OF THE APPLICATION WAS POSTED BY THE RESPONDENT ON OCTOBER 20TH, 1968. ON OCTOBER 22ND, 1968, MR. DIXON, AN EMPLOYEE OF THE RESPONDENT, FOLLOWING A DISCUSSION WITH THREE OTHER EMPLOYEES, PHILLIPS, MASON AND MATTA, COMPOSED THE HEADING ON A DOCUMENT WHICH WAS TYPED BY MR. PHILLIPS' WIFE. COPIES OF THIS DOCUMENT WERE GIVEN TO TEN EMPLOYEES WHO OBTAINED THE SIGNATURES OF CERTAIN OTHER EMPLOYEES. FIVE OF THE EMPLOYEES WHO HAD CIRCULATED THE INITIAL DOCUMENT REQUESTING A VOTE ALSO CIRCULATED THE PETITION IN OPPOSITION TO THE INSTANT APPLICATION.

8. ON OCTOBER 22ND, MR. PHILLIPS AND MR. MATTA AGAIN ATTENDED AT MR. MCKERRAL'S OFFICE AND REQUESTED ASSISTANCE AS TO THE MANNER IN WHICH THE PETITION SHOULD BE CIRCULATED. MR. MCKERRAL REFERRED

MR. PHILLIPS AND MR. MATTA TO FORM 5, NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND OF HEARING, AND ALSO TO A BOOKLET CONTAINING THE BOARD'S RULES OF PROCEDURE. IN ADDITION, MR. MCKERRAL PRODUCED A BOOKLET ENTITLED "A GUIDE TO ONTARIO LABOUR RELATIONS LAW, PREPARED FOR THE ONTARIO DIVISION CANADIAN MANUFACTURERS' ASSOCIATION" AND REFERRED THE TWO EMPLOYEES TO A SECTION OF THAT BOOKLET ENTITLED "PETITION AGAINST CERTIFICATION". MR. MCKERRAL SUGGESTED TO THE EMPLOYEES THAT THE PETITION SHOULD NOT BE CIRCULATED IN AUTHORIZED AREAS, I.E., AREAS UNDER THE SUPERVISION OF A FOREMAN, BUT SHOULD ONLY BE CIRCULATED IN "UNAUTHORIZED" AREAS, SUCH AS THE WASHROOM, LUNCHROOM AND PARKING LOT. IT WAS READILY APPARENT THAT THESE INSTRUCTIONS WERE PASSED ON TO THE OTHER EMPLOYEES WHO CIRCULATED THE PETITION BECAUSE IN ALMOST EVERY CASE THEY REFERRED TO THE FACT THAT THEY WERE VERY CAUTIOUS TO ASK THE EMPLOYEES TO SIGN IN "UNAUTHORIZED" AREAS. AGAIN THE EMPLOYEES WHO SUPPORTED THE STATEMENT OF OBJECTIONS, WHEN ASKED WHY A NEW PETITION HAD TO BE CIRCULATED WHEN A PETITION WAS CIRCULATED ASKING FOR A VOTE ON SEPTEMBER 24TH, THE EMPLOYEES READILY ACKNOWLEDGED THAT IT WAS COMMON KNOWLEDGE THROUGHOUT THE PLANT THAT THE "FIRST DOCUMENT WAS NO GOOD BECAUSE MANAGEMENT WAS DIRECTLY INVOLVED IN IT". THE EMPLOYEES KNEW THAT THE FIRST PETITION "WOULD NOT STAND UP" BECAUSE IT WAS SIGNED IN "AUTHORIZED" AREAS.

9. IT WAS READILY APPARENT AND INDEED ACKNOWLEDGED BY SOME OF THE EMPLOYEES WHO CIRCULATED THE PETITION THAT THE PETITION FILED AS EVIDENCE OF OPPOSITION TO THE APPLICATION FLOWED FROM THE EARLIER DOCUMENT WHEREIN A VOTE WAS REQUESTED.

10. IT WAS ALSO ADMITTED THAT THE FIRST DOCUMENT WAS PREPARED WITH THE SUPPORT AND ENCOURAGEMENT OF MANAGEMENT. MR. MCKERRAL FRANKLY ACKNOWLEDGED THAT THE POSITION OF MANAGEMENT WAS WELL KNOWN AND THAT MANAGEMENT WOULD LIKE TO HAVE A REPRESENTATION VOTE TAKEN.

11. IN THE CIRCUMSTANCES OUTLINED ABOVE, WE MUST FIND THAT THE ACTIONS OF MANAGEMENT WHICH LED TO THE CIRCULATION OF THE PETITION WHEREIN A VOTE WAS REQUESTED PREPARED THE MINDS OF THE EMPLOYEES IN SUCH A WAY THAT THE EMPLOYEES WOULD BE RECEPTIVE TO ANY PETITION THAT WAS CIRCULATED FOLLOWING THE APPLICATION FOR CERTIFICATION. MANAGEMENT'S ACTIONS WITH RESPECT TO THE FIRST DOCUMENT WHICH WERE ACKNOWLEDGED TO BE IMPROPER BY MR. MCKERRAL FLOWED TO AND TAINTED THE SECOND DOCUMENT. INDEED, MR. MCKERRAL ASSISTED IN THE PLAN TO CIRCULATE THE SECOND DOCUMENT. WHILE MR. MCKERRAL ADVISED THE EMPLOYEES TO CIRCULATE THE SECOND DOCUMENT IN SUCH A MANNER THAT MANAGEMENT WOULD NOT BE AWARE OF THE FACT THAT IT WAS BEING CIRCULATED FOR SIGNATURES, THE VERY FACT THAT THESE INSTRUCTIONS WERE GIVEN BY A MEMBER OF MANAGEMENT, MAKES SUCH INSTRUCTIONS POINTLESS.

12. THE ASSISTANCE RENDERED BY MR. MCKERRAL TO THE EMPLOYEES AT THE TIME THE FIRST DOCUMENT WAS ORIGINATED AND PREPARED, THE EFFECT OF WHICH CONTINUED TO AND ADVERSELY AFFECTED THE ORIGATION AND PREPARATION OF THE SECOND DOCUMENT, AND THE FACT THAT MOST OF THE SIGNATURES ON THE SECOND DOCUMENT WERE OBTAINED BY PERSONS WHO WERE KNOWN TO HAVE CIRCULATED THE FIRST DOCUMENT WHICH WAS PREPARED WITH THE ASSISTANCE OF MANAGEMENT, WHEN VIEWED TOGETHER WITH THE ADVICE GIVEN BY MR. MCKERRAL WITH RESPECT TO THE MANNER IN WHICH THE PETITION IN THIS MATTER SHOULD BE CIRCULATED, LEADS THE BOARD TO FIND THAT THE EMPLOYER UNDULY INFLUENCED THE EMPLOYEES. THEREFORE THE PETITION FILED IN THIS MATTER IS NOT RELIABLE EVIDENCE OF THE FREE EXPRESSION OF THE TRUE WISHES OF THE EMPLOYEES OF THE RESPONDENT IN THIS CASE.

13. HAVING REGARD TO ALL THE CIRCUMSTANCES OUTLINED ABOVE WHICH LED TO THE ORIGATION AND CIRCULATION OF THE DOCUMENTS SUBMITTED TO THE BOARD AS INDICATIVE OF OPPOSITION BY SOME OF THE EMPLOYEES OF THE RESPONDENT TO THE APPLICATION OF THE APPLICANT, WE ARE NOT PREPARED TO HOLD THAT THE DOCUMENTS WEAKEN THE EVIDENCE OF MEMBERSHIP SUBMITTED BY THE APPLICANT IN THIS CASE SO AS TO MAKE IT NECESSARY FOR THE BOARD TO SEEK THE CONFIRMATORY EVIDENCE OF A REPRESENTATION VOTE. ACCORDINGLY, IT WILL NOT BE NECESSARY FOR THE BOARD TO INQUIRE INTO THE ALLEGATIONS OF UNFAIR CONDUCT MADE BY THE APPLICANT IN THIS MATTER.

14. COUNSEL FOR THE RESPONDENT WITHDREW THE CHARGES MADE ON BEHALF OF THE RESPONDENT BY LETTER DATED NOVEMBER 18TH, 1968, BY LEAVE OF THE BOARD.

15. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

16. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT AT WOODSTOCK, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAT 24 HOURS PER WEEK, STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, AND STUDENTS EMPLOYED IN CONNECTION WITH A UNIVERSITY CO-OPERATIVE TRAINING PROGRAM, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

17. FOR THE PURPOSES OF CLARITY, THE BOARD NOTES THE AGREEMENT OF THE PARTIES THAT PLANT INDUSTRIAL ENGINEERING STAFF AND TOOL DRAFTSMEN ARE EXCLUDED FROM THE BARGAINING UNIT UNDER THE CLASSIFICATION OF OFFICE STAFF.

18. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION

WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 28TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

19. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15254-68-R: LOCAL 12-L, LITHOGRAPHERS AND PHOTOENGRAVERS INTERNATIONAL UNION (APPLICANT) v. INLAND PUBLISHING CO., LIMITED (RESPONDENT) v. INTERNATIONAL BROTHERHOOD OF BOOKBINDERS LOCAL #28 (INTERVENER).

BEFORE: G. W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: N.H. GRAY AND T. ARMSTRONG FOR THE APPLICANT; R.P. ARMSTRONG, D. POITRAS AND L. REID FOR THE RESPONDENT; AND C. ROSE FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 11, 1968.

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2. THIS IS AN APPLICATION FOR CERTIFICATION. THE RESPONDENT'S OPERATIONS IN ITS PLANT CONSIST OF A PRESS OPERATION, A PHOTO-MECHANICAL OPERATION AND A BINDERY AND MAILING OPERATION. THE APPLICANT TRADE UNION IS SEEKING A CRAFT UNIT OF EMPLOYEES IN THE PRESS AND PHOTOMECHANICAL OPERATIONS OF THE RESPONDENT. THE RESPONDENT CONTENDS THAT IN THE PARTICULAR CIRCUMSTANCES OF THIS CASE THE APPROPRIATE BARGAINING UNIT INCLUDES ALL THREE OPERATIONS, PRESS, PHOTO-MECHANICAL AND BINDERY AND MAILING.

3. AN EXAMINER WAS APPOINTED TO INQUIRE INTO THE DUTIES AND RESPONSIBILITIES OF THE EMPLOYEES IN THE BINDERY AND MAILING DEPARTMENT. WE HAVE CAREFULLY CONSIDERED THE EVIDENCE CONTAINED IN HIS REPORT, TOGETHER WITH THE REPRESENTATIONS OF ALL THE PARTIES. AS NOTED ABOVE, THE APPLICANT IS SEEKING A CRAFT BARGAINING UNIT AND, IN OUR VIEW, UNDER SECTION 6(2) OF THE LABOUR RELATIONS ACT, IT IS MANDATORY ON THE BOARD TO GRANT SUCH A UNIT IN THE PRESENT CASE. EVEN IF THAT WERE NOT THE CASE, THE EVIDENCE IN OUR VIEW FALLS FAR SHORT OF ESTABLISHING THE NECESSARY DEGREE OF INTER-CHANGE OF EMPLOYEES OR INTERDEPENDENCE IN THE THREE OPERATIONS TO WARRANT THE BOARD FINDING THE APPROPRIATE UNIT TO BE AN ALL EMPLOYEE UNIT, AS OPPOSED TO A CRAFT UNIT.

4. HAVING REGARD TO THE ABOVE CONSIDERATION AND TO THE FURTHER REPRESENTATIONS OF THE PARTIES, THE BOARD FINDS FURTHER THAT ALL PHOTOLITHOGRAPHIC OFFSET PRESSMEN, THEIR APPRENTICES,

FEEDERS AND HELPERS AND ALL PHOTOLITHOGRAPHIC OFFSET CAMERAMEN, PLATEMAKERS AND THEIR APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF CHINGUACOUSY IN THE COUNTY OF PEEL SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

5. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON OCTOBER 30, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

6. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15276-68-R: TRENTON CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 52, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. WM. FINKLE MACHINE LIMITED (RESPONDENT) V. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 (INTERVENER #1) V. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, LOCAL 721 (INTERVENER #2).

BEFORE: J.H. BRONW, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: E. VANDERKLOET FOR THE APPLICANT, W. FINKLE FOR THE RESPONDENT, H.A. HERRON FOR INTERVENER #1, PAMELA A. THOMSON FOR INTERVENER #2.

DECISION OF THE BOARD: DECEMBER 10, 1968.

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2. THE APPLICANT IS APPLYING FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT IN BOARD CONSTRUCTION GEOGRAPHIC AREA #12 SAVE AND EXCEPT NON-WORKING FOREMEN, PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN AND OFFICE STAFF.

3. WILLIAM FINKLE, THE PRESIDENT OF THE RESPONDENT, ORIGINALLY CARRIED ON BUSINESS UNDER TWO SEPARATE SOLE PROPRIETORSHIPS, ONE NAMED WM. FINKLE MACHINE COMPANY AND THE OTHER NAMED FINKLE CRANE RENTALS. UNDER THE FORMER SOLE PROPRIETORSHIP, FINKLE OPERATED A SHOP AND YARD IN WHICH HE FABRICATED STEEL AND SERVICED CONSTRUCTION EQUIPMENT. UNDER THE LATTER SOLE PROPRIETORSHIP, HE RENTED OUT CRANES WITH OPERATORS. ON DECEMBER 29TH, 1966, FINKLE

INCORPORATED TWO NEW COMPANIES, ONE NAMED WM. FINKLE MACHINE LIMITED AND THE OTHER NAMED FINKLE CRANE RENTALS LTD. THE FORMER INCORPORATED COMPANY ACQUIRED ALL THE ASSETS OF THE SOLE PROPRIETORSHIP FINKLE MACHINE COMPANY AND THE LATTER INCORPORATED COMPANY ACQUIRED ALL THE ASSETS OF THE SOLE PROPRIETORSHIP FINKLE CRANE RENTALS.

4. ON JULY 20TH, 1966, INTERVENER #2 (HEREINAFTER REFERRED TO AS LOCAL 721) APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR A UNIT OF EMPLOYEES OF FINKLE MACHINE COMPANY. WILLIAM FINKLE'S REPLY TO THAT APPLICATION STATED THAT THE CORRECT NAME OF THE RESPONDENT WAS FINKLE CRANE RENTALS LTD. THE BOARD ACCORDINGLY SO AMENDED THE NAME OF THE RESPONDENT IN THE MISTAKEN BELIEF THAT SUCH AN INCORPORATED COMPANY WAS THEN IN EXISTENCE. LOCAL 721 WAS CERTIFIED ON AUGUST 3RD, 1966 FOR ALL IRONWORKERS IN THE EMPLOY OF FINKLE CRANE RENTALS LTD. IN BOARD CONSTRUCTION GEOGRAPHIC AREA #12.

5. ON AUGUST 5TH, 1966, J. TRESSIDER, BUSINESS AGENT FOR LOCAL 721, SENT TO FINKLE CRANE RENTALS LIMITED SIX COPIES OF AN AGREEMENT WITH A COVERING LETTER REQUESTING THE FINKLE EXECUTE THEM ON BEHALF OF THE COMPANY. FINKLE DID NOT SIGN THE AGREEMENTS. THERE HAS BEEN NO COMMUNICATION BETWEEN LOCAL 721 AND FINKLE, WHO IS THE PRESIDENT OF BOTH FINKLE CRANE RENTALS LIMITED AND WM. FINKLE MACHINE LIMITED, SINCE THE RECEIPT BY FINKLE OF TRESSIDER'S LETTER OF AUGUST 5TH, 1966 AND THE FILING OF THE INSTANT APPLICATION ON OCTOBER 29TH, 1968.

6. FINKLE CRANE RENTALS LIMITED IS A MEMBER OF THE CRANE RENTAL ASSOCIATION OF ONTARIO AND IS BOUND BY THE CURRENT COLLECTIVE AGREEMENT BETWEEN THE ASSOCIATION AND INTERVENER #1, WHICH COVERS ALL EMPLOYEES OF THE MEMBERS OF THE ASSOCIATION FALLING UNDER THE JURISDICTION OF THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793. SINCE THE BARGAINING RIGHTS HELD BY LOCAL 793 ONLY COVER EMPLOYEES FALLING WITHIN THE JURISDICTION OF THE OPERATING ENGINEERS AND THOSE BARGAINING RIGHTS RELATE TO THE EMPLOYEES OF FINKLE CRANE RENTALS LIMITED AND NOT THE RESPONDENT, INTERVENER #1 HAS NO DIRECT INTEREST IN THE INSTANT APPLICATION.

7. RAYMOND FINKLE, THE SON OF WILLIAM FINKLE, IS ENGAGED IN THE BUSINESS OF STEEL ERECTION UNDER A SOLE PROPRIETORSHIP WHICH WAS REGISTERED ON SEPTEMBER 26TH, 1967 IN THE NAME OF DY-NAMIC ERECTORS. ON JUNE 24TH, 1968, LOCAL 721 ENTERED INTO A COLLECTIVE AGREEMENT COVERING ALL OUTSIDE EMPLOYEES OF DY-NAMIC ERECTORS.

8. LOCAL 721 REQUESTS THAT THE BOARD AMEND ITS CERTIFICATE OF AUGUST 3RD, 1966 TO CHANGE THE NAME OF THE RESPONDENT TO READ "WILLIAM FINKLE CARRYING ON BUSINESS UNDER THE FIRM NAME AND

STYLES OF 'WM. FINKLE MACHINE COMPANY' AND 'FINKLE CRANE RENTALS'." LOCAL 721 SUBMITS THAT BY VIRTUE OF SECTION 47A OF THE ACT, IT CONTINUES TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF THE TWO INCORPORATED COMPANIES WHICH WERE THE SUCCESSOR EMPLOYERS OF THE SOLE PROPRIETORSHIPS.

9. ACCORDING TO THE EVIDENCE, NO NOTICE WAS GIVEN BY LOCAL 721 OF ITS DESIRE TO BARGAIN TO EITHER WM. FINKLE MACHINE LIMITED OR FINKLE CRANE RENTALS LIMITED SINCE THESE COMPANIES BECAME THE SUCCESSOR EMPLOYERS OF THE RESPECTIVE SOLE PROPRIETORSHIPS OF WM. FINKLE MACHINE COMPANY AND FINKLE CRANE RENTALS. ASSUMING FOR PURPOSES OF ARGUMENT THAT LOCAL 721 CONTINUED TO HOLD THE BARGAINING RIGHTS FOR THE EMPLOYEES OF BOTH THE INCORPORATED COMPANIES PURSUANT TO SECTION 47A OF THE ACT, THE INSTANT APPLICATION OF THE APPLICANT STILL WOULD BE TIMELY BY REASON OF THE FAILURE OF LOCAL 721 TO GIVE NOTICE TO EITHER COMPANY.

10. IN VIEW OF THE FACT, HOWEVER, THAT LOCAL 721 HAS NOT COMMUNICATED OR ATTEMPTED TO COMMUNICATE WITH EITHER OF THE SOLE PROPRIETORSHIPS OR THE SUCCESSOR INCORPORATED COMPANIES FOR OVER A TWO YEAR PERIOD, WE FIND THAT LOCAL 721 HAS ABANDONED ANY BARGAINING RIGHTS IT MAY HAVE HELD FOR THE EMPLOYEES OF WM. FINKLE MACHINE LIMITED OR FINKLE CRANE RENTALS LIMITED. HAVING REGARD TO THE LATTER FINDING, NO PURPOSE NOW WOULD BE SERVED BY COMPLYING TO THE REQUEST OF LOCAL 721. THE REQUEST OF LOCAL 721 ACCORDINGLY IS DENIED.

11. THE BOARD HAS CONSIDERED THE EVIDENCE ADDUCED AT THE HEARING IN THIS MATTER CONCERNING THE NATURE OF THE RESPONDENT'S OPERATIONS. THE BOARD HAS ALSO TAKEN INTO ACCOUNT THE INFORMATION CONTAINED IN THE REPORT OF THE EXAMINER DATED NOVEMBER 21ST, 1968, AND THE WRITTEN REPRESENTATIONS OF THE PARTIES RELATING TO THE REPORT.

12. THE REPORT SHOWS THAT AS OF THE DATE OF THE MAKING OF THE INSTANT APPLICATION TWO EMPLOYEES WERE ENGAGED IN THE FABRICATION OF STEEL IN THE RESPONDENT'S SHOP. IN LIGHT OF THE NATURE OF THE BUSINESS CARRIED ON BY THE RESPONDENT IN ITS SHOP, THE BOARD FINDS THAT SUCH OPERATIONS DO NOT FALL WITHIN THE CONSTRUCTION INDUSTRY AS DEFINED IN SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT. ACCORDINGLY, WITH RESPECT TO THE SHOP EMPLOYEES WE ARE SATISFIED THAT THIS IS NOT AN APPLICATION FALLING UNDER SECTION 92 OF THE ACT.

13. THE BOARD THEREFORE FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT ITS SHOP AT BELLEVILLE, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, AND OFFICE STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

14. THE BOARD NOTES THE AGREEMENT OF THE APPLICANT AND THE RESPONDENT THAT ARTHUR READ WHO IS CLASSIFIED AS A WORKING FOREMAN DOES NOT EXERCISE MANAGERIAL FUNCTIONS AND IS INCLUDED IN THE BARGAINING UNIT.

15. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 5TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

16. A CERTIFICATE WILL ISSUE TO THE APPLICANT FOR THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 13.

17. THE REPORT OF THE EXAMINER REVEALS THAT AS OF THE DATE OF THE MAKING OF THE APPLICATION FOUR EMPLOYEES OF THE RESPONDENT WERE ENGAGED IN THE INSTALLATION OF PREFABRICATED STEEL ON CONSTRUCTION PROJECTS. WITH RESPECT TO THIS ASPECT OF THE RESPONDENT'S BUSINESS, THE BOARD FINDS THAT THE RESPONDENT IS ENGAGED IN THE CONSTRUCTION INDUSTRY WITHIN THE MEANING OF SECTION 1(1)(DA) OF THE LABOUR RELATIONS ACT. THE BOARD ACCORDINGLY FINDS THAT IN RELATION TO THE INSTALLATION WORK OF THE RESPONDENT, THE PRESENT APPLICATION FOR CERTIFICATION IS AN APPLICATION WITHIN THE MEANING OF SECTION 92 OF THE ACT.

18. THE BOARD THEREFORE FINDS THAT ALL IRONWORKERS IN THE EMPLOY OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF PREFABRICATED STEEL IN PRINCE EDWARD COUNTY AND THE TOWNSHIPS OF LAKE, TUDOR, GRIMSTHORPE, MARMORA, MADOC, ELZEVIR, RAWDON, HUNTINGDON, HUNGERFORD, SIDNEY, THURLOW AND TYENDINAGA IN THE COUNTY OF HASTINGS AND THE TOWNSHIPS OF PERCY, SEYMOUR, CRAMAHE, BRIGHTON AND MURRAY IN THE COUNTY OF NORTHUMBERLAND, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

19. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY-FIVE PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON NOVEMBER 5TH, 1968, THE TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

20. A CERTIFICATE WILL ISSUE TO THE APPLICANT FOR THE BARGAINING UNIT DESCRIBED IN PARAGRAPH 18.

15325-68-R: CANADIAN UNION OF PUBLIC EMPLOYEES (APPLICANT) V.
UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN AND BOARD MEMBERS
D.B. ARCHER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: D.R. LINDSAY, A. RISELEY AND
T.E. ARMSTRONG FOR THE APPLICANT, AND A.J. CLARK & K. SYMONS
FOR THE RESPONDENT.

DECISION OF THE BOARD DECEMBER 8, 1968.

1. THIS IS AN APPLICATION FOR CERTIFICATION IN WHICH THE
RESPONDENT MOVED THAT THE APPLICATION BE DISMISSED.
2. IN SUPPORT OF ITS MOTION, THE RESPONDENT RELIED UPON THE
FACT THAT THE APPLICANT HAD PREVIOUSLY APPLIED FOR CERTIFICATION
FOR SIMILAR BARGAINING UNIT, BUT HAD WITHDRAWN THE APPLICATION
FOLLOWING A DIRECTION BY THE BOARD FOR A CONTINUATION OF HEARING
TO INQUIRE INTO THE CIRCUMSTANCES SURROUNDING THE APPLICATION FOR
MEMBERSHIP IN THE APPLICANT UNION BY MILLARD MACKENZIE. THIS DIR-
ECTION WAS DATED SEPTEMBER 25, 1968. ON OCTOBER 9, 1968, FOLLOW-
ING THE REQUEST OF THE APPLICANT TO WITHDRAW ITS APPLICATION FOR
CERTIFICATION, THE BOARD DISMISSED THE APPLICATION.
3. COUNSEL FOR THE RESPONDENT INVITED THE BOARD TO FIND THAT
THE FOREGOING FACTS INDICATED THAT THE MEMBERSHIP EVIDENCE IN THE
FIRST APPLICATION WAS TAINTED, AND THAT TAINT ATTACHED ITSELF TO
THE MEMBERSHIP EVIDENCE IN THE PRESENT CASE.
4. THE BOARD HAS NO EVIDENCE WHATSOEVER WITH RESPECT TO THE
FIRST APPLICATION, AND INDEED WOULD BE IMPROPER FOR THE BOARD IN
THE INSTANT MATTER TO PERMIT ITSELF TO BE INFLUENCED IN ANY WAY BY
ANY EVIDENCE THAT MIGHT HAVE COME BEFORE THE PANEL WHICH DEALT WITH
THE FIRST APPLICATION. IN ANY EVENT, THE MEMBERSHIP EVIDENCE SUB-
MITTED IN THE PRESENT APPLICATION CONSISTS OF NEW CARDS SIGNED
SUBSEQUENT TO OCTOBER 9, 1968, TOGETHER WITH REAFFIRMATIONS OF
APPLICATIONS FOR MEMBERSHIP AND PERSONAL PAYMENTS OF \$1.00 WHICH
ARE ATTACHED TO CARDS WHICH HAD BEEN FILED IN THE PREVIOUS APPLI-
CATION. IN THE CIRCUMSTANCES, THE BOARD FINDS THAT THERE IS NO
TAINT ATTACHED TO THE MEMBERSHIP EVIDENCE FILED HEREIN, AND THE
RESPONDENT'S MOTION IS ACCORDINGLY DISMISSED.
5. DURING THE COURSE OF THE DISCUSSION AS TO THE APPROPRIATE
BARGAINING UNIT, THE RESPONDENT REQUESTED THE EXCLUSION OF PERSONS
DESIGNATED BY IT "TEMPORARY EMPLOYEES". THE ARGUMENT WAS MADE THAT
THE EMPLOYEES SO DESIGNATED WERE SEASONAL EMPLOYEES ONLY, AND THAT

THEY SHOULD BE EXCLUDED ON THE BASIS OF LACK OF COMMUNITY OF INTEREST WITH THE OTHER EMPLOYEES IN THE BARGAINING UNIT, ON THE GROUNDS ANALOGOUS TO THOSE UPON WHICH THE BOARD EXCLUDES STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD, PERSONS REGULARLY EMPLOYED FOR NOT MORE THAN TWENTY-FOUR HOURS PER WEEK AND EMPLOYEES IN THE CANNING INDUSTRY.

6. THE BOARD HAS GIVEN CONSIDERATION TO THE SUBMISSION OF THE RESPONDENT WITH RESPECT TO THE TEMPORARY EMPLOYEES, BUT FINDS NOTHING IN THE PRESENT SITUATION TO WARRANT A CHANGE IN ITS CUSTOMARY PRACTICE OF INCLUDING PERSONS DESCRIBED AS TEMPORARY EMPLOYEES IN A BARGAINING UNIT OF EMPLOYEES SUCH AS THOSE INVOLVED IN THE PRESENT APPLICATION.

7. MR. J. R. HENDERSON EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON THE DUTIES AND RESPONSIBILITIES OF NORMAN BRAITHWAITE, LESLIE COTTER, WILLIAM DEAN, EVERETT ELLIS, CLIFFORD MOORE, JAMES STARK, WILLIAM TAYLOR AND GEORGE WARNER, ALL OF WHOM ARE CLASSIFIED AS FOREMEN.

15352-68-R: TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS, LOCAL UNION 141, LONDON, ONTARIO (APPLICANT) V. LAIDLAW TRANSPORT LIMITED (RESPONDENT). V. CANADIAN TRANSPORTATION WORKERS' UNION No. 188 (INTERVENER).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: E.B. JOLLIFFE, Q.C., AND J. HURD FOR THE APPLICANT, E.L. STRINGER AND G. COLE FOR THE RESPONDENT, L.J. LABONTE AND E. HUGHES FOR THE INTERVENER.

DECISION OF THE BOARD: DECEMBER 11, 1968.

1. THE BOARD FINDS THAT THE APPLICANT IS A TRADE UNION WITHIN THE MEANING OF SECTION 1(1)(J) OF THE LABOUR RELATIONS ACT.

2. THE APPLICANT IS APPLYING TO THE BOARD FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF SOUTHWOLD TOWNSHIP, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF.

3. THE RESPONDENT SUBMITS THAT THE INSTANT APPLICATION IS UNTIMELY BY REASON OF THE FACT THAT THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ARE ALREADY COVERED BY A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.

4. THERE WAS FILED WITH THE BOARD A COLLECTIVE AGREEMENT DATED OCTOBER 1ST, 1966 BETWEEN THE RESPONDENT AND THE INTERVENER. THE DURATION CLAUSE PROVIDES THAT THE AGREEMENT IS TO REMAIN IN EFFECT FOR THREE YEARS FROM OCTOBER 1ST, 1966 AND FROM YEAR TO YEAR THEREAFTER SUBJECT TO NOTICE. THE RELEVANT PORTION OF THE RECOGNITION CLAUSE OF THE AGREEMENT READS:

THE COMPANY RECOGNIZES THE UNION AS THE SOLE AND EXCLUSIVE BARGAINING AGENT FOR ITS EMPLOYEES CLASSIFIED AS DRIVERS, DOCKMEN, CHECKERS, MAINTENANCE MEN AND MECHANICS EMPLOYED AT OR OUT OF THE COMPANY'S TERMINAL OR TERMINALS AT THE CITY OF LONDON AND IN THE COUNTY OF MIDDLESEX.

5. THE APPLICANT IS SEEKING CERTIFICATION FOR TWO EMPLOYEES OF THE RESPONDENT WORKING AT A PLANT OF THE FORD COMPANY OF CANADA LIMITED WHERE THE RESPONDENT CARRIES ON A "SHUNTING" OPERATION. THE PLANT IS LOCATED IN SOUTHWOLD TOWNSHIP, WHICH IS IN THE COUNTY OF ELGIN. ONE OF THE TWO EMPLOYEES CONCERNED IS CLASSIFIED AS A DRIVER AND THE OTHER AS A DOCKMAN. ALTHOUGH THEY BOTH REPORT DAILY TO THE FORD PLANT THEY ARE IN REGULAR RADIO COMMUNICATION WITH THE RESPONDENT'S TERMINAL AT LONDON. THEY WORK UNDER THE SUPERVISION OF AND RECEIVE THEIR INSTRUCTIONS FROM THE RESPONDENT'S DISPATCHER WHO IS LOCATED AT THE LONDON TERMINAL. THE TWO EMPLOYEES ARE PAID IN ACCORDANCE WITH THE WAGE PROVISIONS OF THE COLLECTIVE AGREEMENT. MOREOVER, THEY RECEIVED THE WAGE INCREASE WHICH WAS RECENTLY NEGOTIATED BY THE RESPONDENT AND THE INTERVENER DURING THE TERM OF THE COLLECTIVE AGREEMENT. THERE WAS ALSO FILED WITH THE BOARD COPIES OF "DUES DEDUCTION AUTHORIZATION" CARDS, BOTH DATED JULY 27TH, 1967, SIGNED BY THE TWO EMPLOYEES WORKING AT THE FORD PLANT, AUTHORIZING THE RESPONDENT TO DEDUCT FROM THEIR WAGES REGULAR MONTHLY UNION DUES IN ACCORDANCE WITH THE TERMS OF THE COLLECTIVE AGREEMENT BETWEEN THE RESPONDENT AND THE INTERVENER.

6. THE APPLICANT SUBMITS THAT NOTWITHSTANDING ANY OTHER CONSIDERATION, THE FACT REMAINS THAT THE TWO EMPLOYEES ARE NOT COVERED BY THE RECOGNITION CLAUSE AS DESCRIBED IN THE COLLECTIVE AGREEMENT. THE APPLICANT ARGUES THAT IT FOLLOWS THAT THE INTERVENER THEREFORE DOES NOT HOLD THE BARGAINING RIGHTS FOR THE TWO EMPLOYEES AND THE COLLECTIVE AGREEMENT IS NOT A BAR TO THE INSTANT APPLICATION.

7. THE RECOGNITION CLAUSE REFERS TO SPECIFIED CLASSIFICATIONS OF EMPLOYEES "EMPLOYED AT OR OUT OF THE COMPANY'S TERMINAL OR TERMINALS AT THE CITY OF LONDON AND IN THE COUNTY OF MIDDLESEX". THE RECOGNITION CLAUSE IS NOT CLEAR ON ITS FACE AS TO WHETHER ITS SCOPE COVERS ONLY THOSE EMPLOYEES OF THE RESPONDENT WHO WORK OUT OF THE RESPONDENT'S TERMINAL AT LONDON BUT WHO DO NOT GO OUTSIDE OF THE COUNTY OF MIDDLESEX OR WHETHER IT COVERS AS WELL THOSE EMPLOYEES

WORKING OUT OF THE RESPONDENT'S LONDON TERMINAL WHO GO BEYOND THE BORDERS OF THE COUNTY OF MIDDLESEX. IN THESE CIRCUMSTANCES, THE BOARD MAY LOOK AT THE EXTRINSIC EVIDENCE BEFORE IT IN ORDER TO DETERMINE THE SCOPE OF THE COLLECTIVE AGREEMENT.

8. BASED ON THE EVIDENCE, THERE IS NO QUESTION THAT THE COVERAGE OF THE AGREEMENT HAS BEEN INTERPRETED BY THE PARTIES TO INCLUDE THOSE EMPLOYEES OF THE RESPONDENT WORKING OUT OF THE LONDON TERMINAL WHO GO BEYOND THE BORDERS OF MIDDLESEX COUNTY. THE ONLY WAY IN WHICH THE TWO EMPLOYEES WHO ARE THE SUBJECT OF THIS APPLICATION CAN BE DISTINGUISHED FROM THOSE EMPLOYEES WORKING OUT OF THE LONDON TERMINAL IS THAT THEY DO NOT REPORT TO THE TERMINAL ON A DAILY BASIS. THE TWO EMPLOYEES HAVE THE SAME SUPERVISION, RECEIVE THE IDENTICAL BENEFITS UNDER THE COLLECTIVE AGREEMENT AND, SIGNIFICANTLY, HAVE AUTHORIZED THE RESPONDENT TO DEDUCT UNION DUES FROM THEIR WAGES FOR REMISSION TO THE INTERVENER UNION. THE FACT OF THE MATTER IS THAT ONE OF THE EMPLOYEES HAD PREVIOUSLY REPORTED TO THE LONDON TERMINAL ON A DAILY BASIS. AT HIS REQUEST, HOWEVER, AND AS A MATTER OF PRACTICAL CONVENIENCE TO HIM, THE RESPONDENT PERMITTED HIM TO GO DIRECTLY TO THE FORD PLANT WITHOUT FIRST REPORTING TO THE TERMINAL. WE WOULD MENTION ALSO THAT SUBSEQUENT TO THE MAKING OF THE INSTANT APPLICATION, THE OTHER EMPLOYEE CONCERNED COMMENCED TO REPORT IN AT THE LONDON TERMINAL PRIOR TO TAKING UP HIS DUTIES AT THE FORD PLANT.

9. THE PREPONDERANT WEIGHT OF THE EVIDENCE MAKES IT ABUNDANTLY CLEAR THAT THE EMPLOYEES FOR WHOM THE APPLICANT IS SEEKING CERTIFICATION ARE COVERED BY THE COLLECTIVE AGREEMENT IN EFFECT BETWEEN THE APPLICANT AND THE INTERVENER.

10. THE APPLICATION THEREFORE IS UNTIMELY AND ACCORDINGLY IS DISMISSED.

15385-68-R: GENERAL TRUCK DRIVERS LOCAL UNION 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA (APPLICANT) V. ROTHWAY CONCENTRATES LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
D.B. ARCHER AND F.W. MURRAY.

APPEARANCES AT THE HEARING: T.E. ARMSTRONG A. WILSON AND
R. WEDGE FOR THE APPLICANT, G.A. MACKAY, Q.C., AND D. CORNER
FOR THE RESPONDENT, P.H. SIMS FOR THE OBJECTORS.

DECISION OF THE BOARD: DECEMBER 17, 1968.

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3. HAVING REGARD TO THE AGREEMENT OF THE PARTIES, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT EMPLOYED AT OR WORKING OUT OF ITS PLANTS AND PREMISES AT ELMIRA IN THE COUNTY OF WATERLOO AND ROTHSAÏ IN THE COUNTY OF WELLINGTON, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

4. THE APPLICANT IN THIS MATTER FILED EVIDENCE OF MEMBERSHIP ON BEHALF OF 14 OF THE 27 PERSONS WHOSE NAMES APPEARED ON THE LIST OF EMPLOYEES INCLUDED IN THE BARGAINING UNIT.

5. THE APPLICANT CALLED EVIDENCE IN SUPPORT OF ITS ALLEGATIONS OF IMPROPER CONDUCT AGAINST THE RESPONDENT AND REQUESTED THE BOARD TO GIVE EFFECT TO THE PROVISIONS OF SECTION 7(5) OF THE LABOUR RELATIONS ACT AND CERTIFY THE APPLICANT AS BARGAINING AGENT FOR THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT WITHOUT TAKING A REPRESENTATION VOTE.

6. THE EVIDENCE CLEARLY ESTABLISHED THAT THE RESPONDENT, THROUGH FOUR OF ITS OFFICIALS, DURING THE COURSE OF THE APPLICANT'S ORGANIZING CAMPAIGN ENGAGED IN CONCERTED, COERCIVE CONDUCT BY INQUIRING WHICH OF ITS EMPLOYEES SUPPORTED THE UNION AND BY ATTEMPTING TO ASCERTAIN THE IDENTITY OF THE EMPLOYEE WHO WAS RESPONSIBLE FOR INITIATING THE APPLICANT'S CAMPAIGN. AFTER AN EMPLOYEE WAS IDENTIFIED AS BEING THE PERSON RESPONSIBLE FOR BRINGING IN THE UNION, THAT EMPLOYEE WAS DISCHARGED IN SUCH A MANNER AS TO CAUSE OTHER EMPLOYEES TO BELIEVE THAT HE WAS DISCHARGED FOR HIS ALLEGED UNION ACTIVITY. PROMISES WERE ALSO MADE WITH RESPECT TO SENIORITY AND THE FORMATION OF A FORMAL SHOP COMMITTEE, SUBJECT TO THE DEFEAT OF THE UNION'S ATTEMPT TO BECOME BARGAINING AGENT. THE RESPONDENT'S CONDUCT AS OUTLINED ABOVE WAS CARRIED ON OPENLY AND RELENTLESSLY.

7. HAVING REGARD FOR THE REASONS CONTAINED IN THE UNDERWOOD MANUFACTURING COMPANY LIMITED CASE, 52 C.L.L.C. 17,040. WE FIND THAT THE RESPONDENT'S CONDUCT, AS SUMMARIZED ABOVE, WOULD CONSTITUTE UNDUE INFLUENCE AND WOULD TEND TO SO AFFECT THE EMPLOYEES IN THE BARGAINING UNIT AS TO MAKE IT UNLIKELY THAT A REPRESENTATION VOTE WOULD DISCLOSE A FREE EXPRESSION OF THEIR TRUE WISHES.

8. THE BOARD IS SATISFIED ON THE BASIS OF ALL THE EVIDENCE BEFORE IT THAT MORE THAN FIFTY PER CENT OF THE EMPLOYEES OF THE RESPONDENT IN THE BARGAINING UNIT, AT THE TIME THE APPLICATION WAS MADE, WERE MEMBERS OF THE APPLICANT ON DECEMBER 3RD, 1968, THE

TERMINAL DATE FIXED FOR THIS APPLICATION AND THE DATE WHICH THE BOARD DETERMINES, UNDER SECTION 77(2)(J) OF THE LABOUR RELATIONS ACT, TO BE THE TIME FOR THE PURPOSE OF ASCERTAINING MEMBERSHIP UNDER SECTION 7(1) OF THE SAID ACT.

9. SINCE WE ARE SATISFIED THAT THE TRUE WISHES OF THE EMPLOYEES ARE NOT LIKELY TO BE DISCLOSED BY A REPRESENTATION VOTE AND THAT MORE THAN FIFTY PER CENT OF THE EMPLOYEES IN THE BARGAINING UNIT ARE MEMBERS OF THE APPLICANT, WE ARE THEREFORE OF OPINION THAT THE APPLICANT IS ENTITLED TO THE PROTECTION AFFORDED BY SECTION 7(5) OF THE LABOUR RELATIONS ACT AND TO BE CERTIFIED WITHOUT THE TAKING OF A REPRESENTATION VOTE.

10. A CERTIFICATE WILL ISSUE TO THE APPLICANT.

15397-68-R: LUMBER & SAWMILL WORKERS UNION LOCAL 2537 (APPLICANT) V. CONSOLIDATED-BATHURST LIMITED (RESPONDENT) INTERNATIONAL WOODWORKERS OF AMERICA (INTERVENER) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS E. BOYER AND H.F. IRWIN.

APPEARANCES AT THE HEARING: P.A. THOMSON FOR THE APPLICANT, J.D. RICHARD, L. MOORE AND R. BOUDREAU FOR THE RESPONDENT, L.A. MACLEAN AND J.C. HORAN FOR THE INTERVENER, NO ONE FOR THE OBJECTORS.

DECISION OF THE BOARD: DECEMBER 13, 1968.

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3. THE APPLICANT IN ITS APPLICATION APPLIED FOR CERTIFICATION AS BARGAINING AGENT FOR ALL EMPLOYEES OF THE RESPONDENT EMPLOYED IN THE LICENCE AREA OF LICENCE NOS. D-968 AND D-1600. THE RESPONDENT IN ITS REPLY STATED THAT ON THE DATE OF APPLICATION IT HAD NO EMPLOYEES EMPLOYED IN THE LICENCE AREAS DESIGNATED BY THE APPLICANT.

4. BY LETTER DATED DECEMBER 10TH, 1968, COUNSEL FOR THE APPLICANT REQUESTED LEAVE OF THE BOARD TO AMEND THE GEOGRAPHIC DESCRIPTION OF THE BARGAINING UNIT BY DELETING THE REFERENCE TO THE LICENCE AREAS AND SUBSTITUTING THEREFOR SIXTEEN NAMED TOWNSHIPS OR PARTS THEREOF. ONE OF THE TOWNSHIPS, SOUTH LORRAIN IS IN THE DISTRICT OF TEMISKAMING AND THE REMAINING FIFTEEN TOWNSHIPS ARE IN THE DISTRICT OF NIPISSING. AT THE HEARING IN THIS MATTER ON DECEMBER 11TH, COUNSEL FOR THE RESPONDENT CONFIRMED THAT THERE WERE NO EMPLOYEES OF THE RESPONDENT IN THE LICENCE AREAS REFERRED TO IN THE ORIGINAL APPLICATION. HE ADVISED THE BOARD, HOWEVER, THAT THE RESPONDENT DID HAVE EMPLOYEES IN THE LICENCE AREA NO. D-2482 WHICH INCORPORATES ALL OR PARTS OF THE TOWNSHIPS DESCRIBED IN THE AMENDMENT PROPOSED BY THE APPLICANT.

5. COUNSEL FOR THE INTERVENER INFORMED THE BOARD THAT THE INTERVENER FILED ITS INTERVENTION BECAUSE IT WAS NOT CLEAR FROM THE DESCRIPTION OF THE BARGAINING UNIT PROPOSED BY THE APPLICANT IN ITS APPLICATION WHETHER THE BARGAINING RIGHTS ALREADY HELD BY THE INTERVENER MIGHT BE AFFECTED. HAVING REGARD TO THE FACT THAT THE GEOGRAPHIC AREA FOR WHICH THE APPLICANT IS SEEKING CERTIFICATION IS IN THE DISTRICTS OF TEMISKAMING AND NIPISSING, AND THE BARGAINING RIGHTS HELD BY THE INTERVENER WITH RESPECT TO EMPLOYEES OF THE RESPONDENT ARE LOCATED IN THE COUNTY OF RENFREW, COUNSEL ADVISED THE BOARD THAT THE INTERVENER HAD NO FURTHER INTEREST IN THESE PROCEEDINGS.

6. ALTHOUGH A NOTICE OF THE APPLICATION (FORM 5) WAS POSTED AT THE ENTRANCE TO LICENCE AREA D-968, NO NOTICE OF THE APPLICATION WAS POSTED AT CAMP 14 OUT OF WHICH LOCATION EMPLOYEES OF THE RESPONDENT ARE WORKING IN THE TOWNSHIPS OF ELDRIDGE AND HERBERT. AT THE VERY LEAST A POSTING OF THE NOTICE OF THE APPLICATION WOULD HAVE TO BE AFFECTED AND A NEW TERMINAL DATE FIXED FOR THE APPLICATION.

7. COUNSEL FOR THE APPLICANT REQUESTED THAT THE BOARD PERMIT THE APPLICANT TO AMEND THE DESCRIPTION OF THE PROPOSED BARGAINING UNIT CONTAINED IN ITS APPLICATION IN ACCORDANCE WITH ITS LETTER OF DECEMBER 10TH, REFERRED TO IN PARAGRAPH 4. COUNSEL FOR THE RESPONDENT SUBMITS THAT THE APPLICATION SHOULD BE DISMISSED.

8. HAVING REGARD TO ALL THE CIRCUMSTANCES AND THE SUBMISSIONS OF COUNSEL, THE APPLICANT HAS FAILED TO SATISFY THE BOARD THAT IN THE EXERCISE OF ITS DISCRETION, THE BOARD OUGHT TO COMPLY WITH THE APPLICANT'S REQUEST.

9. THE APPLICATION ACCORDINGLY IS DISMISSED.

INDEXED ENDORSEMENTS - TERMINATION

15249-68-R: VIRCHEM OF CANADA, LIMITED (APPLICANT) V. TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: D.F.O. HERSEY, W.L. HOFFMAN FOR THE APPLICANT AND T.E. ARMSTRONG, C. CLARK FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 10, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION TERMINATING BARGAINING RIGHTS PURSUANT TO SECTION 45(1) OF THE LABOUR RELATIONS ACT WHICH STATES:

"IF A TRADE UNION FAILS TO GIVE THE EMPLOYER NOTICE UNDER SECTION 11 WITHIN SIXTY DAYS FOLLOWING CERTIFICATION OR IF IT FAILS TO GIVE NOTICE UNDER SECTION 40 AND NO SUCH NOTICE IS GIVEN BY THE EMPLOYER, THE BOARD MAY, UPON THE APPLICATION OF THE EMPLOYER OR OF ANY OF THE EMPLOYEES IN THE BARGAINING UNIT, AND WITH OR WITHOUT A REPRESENTATION VOTE, DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT."

THE MATERIAL FACTS ARE NOT IN DISPUTE AND ARE AS FOLLOWS:

2. ON AUGUST 14TH, 1968 THE BOARD ISSUED A CERTIFICATE TO THE TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC, AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE APPLICANT WHICH WAS FORWARDED TO THE PARTIES BY LETTERS IN WRITING DATED AUGUST 15TH, 1968.

3. ON AUGUST 20TH, 1968 BY LETTER IN WRITING, THE APPLICANT COMPANY REQUESTED THE BOARD TO AMEND ITS DECISION BY EXCLUDING "STUDENTS EMPLOYED DURING THE SCHOOL VACATION PERIOD". THE BOARD HAD INADVERTENTLY INCLUDED THIS CLASSIFICATION IN THE BARGAINING UNIT, ALTHOUGH THE PARTIES HAD AGREED THAT THEY BE EXCLUDED.

4. ON SEPTEMBER 5TH, 1968 BY LETTERS IN WRITING THE BOARD FORWARDED ITS AMENDED ENDORSEMENT TO THE PARTIES AND REQUESTED A RETURN FOR CORRECTION OF THE CERTIFICATE ISSUED ON AUGUST 14TH, 1968, WHICH CERTIFICATE WAS SUBSEQUENTLY RETURNED TO THE BOARD.

5. ON SEPTEMBER 16TH, 1968 THE BOARD FORWARDED TO THE PARTIES A CERTIFICATE DATED AUGUST 14TH, 1968 WITH THE APPROPRIATE CORRECTION.

6. BY LETTER IN WRITING DATED OCTOBER 15TH, 1968 THE RESPONDENT REQUESTED A MEETING WITH THE REPRESENTATIVES OF THE COMPANY AT THE EARLIEST CONVENIENT TIME AND ADVISED THAT IT WOULD SUBMIT ITS PROPOSALS FOR AN AGREEMENT WITHIN THE NEXT FEW DAYS. THAT LETTER WAS ADDRESSED TO THE APPLICANT'S OFFICE AT CORNWALL, ONTARIO. THE POSTMARK ON THE LETTER INDICATES THAT THE LETTER WAS MAILED ON FRIDAY, OCTOBER 18TH, 1968. THERE WAS NO EVIDENCE AS TO WHEN THE APPLICANT RECEIVED THE LETTER BUT IT DOES ADMIT THAT THE LETTER WAS IN TURN FORWARDED TO ITS OFFICE IN PORTSMOUTH, VIRGINIA AND RECEIVED IN THAT OFFICE ON OCTOBER 23RD, 1968. THIS APPLICATION WAS MADE ON OCTOBER 21ST, 1968.

7. THE APPLICANT IN THE INSTANT MATTER RELIES ON SECTION 45 (1) OF THE LABOUR RELATIONS ACT AND SUBMITS THAT BECAUSE THE RESPONDENT HAS FAILED TO GIVE NOTICE OF ITS DESIRE TO BARGAIN WITH A VIEW TO MAKING A COLLECTIVE AGREEMENT WITHIN 60 DAYS FOLLOWING CERTIFICATION THAT THE BOARD SHOULD DECLARE THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT OR IN THE ALTERNATIVE THAT THE BOARD SHOULD ORDER A REPRESENTATION VOTE. THE APPLICANT SUBMITS THAT THE DATE OF CERTIFICATION IS AUGUST 14TH, 1968 AND THAT THE SIXTY DAY PERIOD RUNS FROM THAT DATE.

8. THE RESPONDENT SUBMITS THAT THE PROPER DATE OF CERTIFICATION IS THE DATE OF THE CORRECTED CERTIFICATE AND THAT THE 60 DAY PERIOD RUNS FROM THAT DATE AND ACCORDINGLY THE APPLICATION IS UNTIMELY AND IN ANY EVENT IT WAS THE RESPONDENT'S IMPRESSION THAT THE 60 DAYS RAN FROM THE DATE OF THE CORRECTED CERTIFICATE AND ACCORDINGLY IT DID NOT GIVE NOTICE WITHIN 60 DAYS FROM AUGUST 14TH, 1968.

9. WE FIND THAT THE DATE OF CERTIFICATION IN THE INSTANT CASE COMMENCED AUGUST 14TH, 1968 AND ACCORDINGLY, THE APPLICATION IS TIMELY.

10. WE FURTHER FIND THAT BECAUSE OF THE OPERATION OF SECTION 85(1) OF THE LABOUR RELATIONS ACT THE NOTICE SENT BY THE RESPONDENT UNION ON OCTOBER 18TH, 1968 WAS RECEIVED BY THE APPLICANT IN THE ORDINARY COURSE OF MAIL AND WE FIND THAT THE NOTICE TO BARGAIN WAS GIVEN BEFORE THE INSTANT APPLICATION WAS MADE.

11. THE BOARD HAS A DISCRETION UNDER SECTION 45(1) OF THE LABOUR RELATIONS ACT AS TO WHETHER IT WILL DECLARE THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT. SEE DOMINION STORES LIMITED, WALLACEBURG V. GENERAL WORKERS' LOCAL 800 INTERNATIONAL UNION OF UNITED BREWERY, FLOUR, CEREAL AND SOFT DRINK DISTILLERY WORKERS OF AMERICA, C.I.O., C.C.H., C.L.L. REPORTER, TRANSFER BINDER '55-'59, ¶16, 047.

12. HAVING REGARD TO THE FACTS OF THIS CASE INCLUDING THE ISSUANCE AND CALLING BACK OF THE CERTIFICATE, THE TIME OF THE APPLICATION, AND THE FACT THAT NOTICE WAS GIVEN, WE FEEL THAT WE SHOULD EXERCISE OUR DISCRETION BY REFUSING THE APPLICATION.

13. THE APPLICATION IS THEREFORE DISMISSED.

15426-68-R: JOHN MCILWAIN (APPLICANT) V. UNITED ELECTRICAL RADIO & MACHINE WORKERS OF AMERICA (RESPONDENT).

(RE: DELTA ELECTRONICS LIMITED,
METROPOLITAN TORONTO).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
P.J. O'KEEFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: A.M. ECCLESTONE, Q.C., JOHN MCILWAIN
AND FRANK SMITH FOR THE APPLICANT, NO ONE FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 18, 1968.

1. THE APPLICANT APPLIED PURSUANT TO THE PROVISIONS OF SECTION 43 AND 45 OF THE LABOUR RELATIONS ACT FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT.
2. IN SUPPORT OF HER APPLICATION, THE APPLICANT FILED A DOCUMENT SIGNED BY 47 OF THE 68 PERSONS IN THE BARGAINING UNIT WHEREIN THEY ASKED FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT. THE RESPONDENT HAVING BEEN DULY SERVED WITH NOTICE OF THESE PROCEEDINGS FAILED TO APPEAR AT THE HEARING IN THIS MATTER.
3. THE UNCONTROVERTED EVIDENCE ESTABLISHED THAT WHILE THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF DELTA ELECTRONICS LIMITED IN 1963, APPROXIMATELY FIVE YEARS HAVE ELAPSED SINCE THE RESPONDENT ACTIVELY ATTEMPTED TO PROMOTE ITS BARGAINING RIGHTS IN THIS MATTER. SINCE THE EVIDENCE ESTABLISHED THAT THE RESPONDENT HAS SLEPT ON ITS BARGAINING RIGHTS FOR APPROXIMATELY FIVE YEARS, THE BOARD ACCORDINGLY FINDS THAT THE RESPONDENT HAS ABANDONED ITS BARGAINING RIGHTS IN THIS MATTER.
4. THE BOARD THEREFORE DECLARES THAT THE RESPONDENT NO LONGER REPRESENTS THE EMPLOYEES OF DELTA ELECTRONICS LIMITED IN METROPOLITAN TORONTO FOR WHOM IT HAS HERETOFORE BEEN THE BARGAINING AGENT.

15463-68-R: LEO LAVOIE (APPLICANT) V. THE LUMBER & SAWMILL WORKERS
UNION LOCAL 2995 OF THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS
OF AMERICA AFL-CIO-CLC (RESPONDENT).

(RE: SPRUCE MOTORS CO. LTD.,
KAPUSKASING).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS E. BOYER
AND R.W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 13, 1968.

1. THE APPLICANT APPLIED ON DECEMBER 9TH, 1968 (APPARENTLY UNDER SECTION 43 OF THE LABOUR RELATIONS ACT) FOR A DECLARATION TERMINATING THE BARGAINING RIGHTS OF THE RESPONDENT WITH RESPECT TO THAT UNIT OF EMPLOYEES OF SPRUCE MOTORS CO. LTD. AT KAPUSKASING REPRESENTED BY THE RESPONDENT.

2. IT WOULD APPEAR THAT THE RESPONDENT WAS CERTIFIED AS BARGAINING AGENT FOR THE EMPLOYEES WITH WHOM WE ARE HERE CONCERNED ON AUGUST 27TH, 1968 AND A CONCILIATION OFFICER WAS APPOINTED BY THE MINISTER TO ASSIST THE RESPONDENT AND SPRUCE MOTORS CO. LTD. ON OCTOBER 4TH, 1968, AND THAT THE MINISTER ADVISED THE PARTIES ON NOVEMBER 29TH, 1968 THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD.

3. SECTION 43(1) OF THE LABOUR RELATIONS ACT READS AS FOLLOWS:

43.-- (1) IF A TRADE UNION DOES NOT MAKE A COLLECTIVE AGREEMENT WITH THE EMPLOYER WITHIN ONE YEAR AFTER ITS CERTIFICATION, ANY OF THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE MAY, SUBJECT TO SECTION 46, APPLY TO THE BOARD FOR A DECLARATION THAT THE TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT.

4. SECTION 46(1) OF THE ACT READS AS FOLLOWS:

46.--(1) SUBJECT TO SUBSECTION 3, WHERE A TRADE UNION HAS NOT MADE A COLLECTIVE AGREEMENT WITHIN ONE YEAR AFTER ITS CERTIFICATION AND THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT, NO APPLICATION FOR CERTIFICATION OF A BARGAINING AGENT OF, OR FOR A DECLARATION THAT A TRADE UNION NO LONGER REPRESENTS THE EMPLOYEES IN THE BARGAINING UNIT DETERMINED IN THE CERTIFICATE SHALL BE MADE UNTIL,

- (A) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR; OR
- (B) THIRTY DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD; OR
- (C) SIX MONTHS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE OF A REPORT OF THE CONCILIATION OFFICER THAT THE DIFFERENCES BETWEEN THE PARTIES CONCERNING THE TERMS OF A COLLECTIVE AGREEMENT HAVE BEEN SETTLED,

AS THE CASE MAY BE.

5. IT THEREFORE APPEARS TO THE BOARD FROM THE FACTS SET OUT ABOVE THAT NONE OF THE TIME PERIODS REFERRED TO IN THE PRECEDING PARAGRAPHS COULD HAVE ELAPSED BETWEEN THE DATE OF THE CERTIFICATION OF THE APPLICANT OR THE DATE THAT THE MINISTER ADVISED THE PARTIES THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD AND THE DATE OF THE MAKING OF THIS APPLICATION.

6. IF THE BOARD IS CORRECT IN ITS ASSUMPTION THAT THE ABOVE ARE THE FACTS OF THIS CASE, IT WOULD FOLLOW, PURSUANT TO THE PROVISIONS OF SECTION 46(1) OF THE ACT THAT THIS APPLICATION IS UNTIMELY.

7. THE BOARD ACCORDINGLY DIRECTS THAT THE APPLICANT ADVISE THE BOARD IN WRITING ON OR BEFORE DECEMBER 23RD, 1968 WHETHER, IN HIS OPINION, THE BOARD IS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT ABOVE. IF THE APPLICANT IS OF OPINION THAT THE BOARD IS IN ERROR HE WILL INCLUDE IN HIS ADVICE TO THE BOARD A SUMMARY OF THE FACTS IN SUPPORT OF HIS OPINION.

8. THIS APPLICATION WILL NOT BE PROCESSED FURTHER PENDING THE RECEIPT OF SUCH ADVICE AND SUMMARY OF FACTS FROM THE APPLICANT.

9. IF THE BOARD DOES NOT RECEIVE SUCH ADVICE SUPPORTED BY A SUMMARY OF FACTS AS HEREIN DIRECTED, THIS APPLICATION WILL BE DISPOSED OF PURSUANT TO THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE WITHOUT FURTHER NOTICE TO THE APPLICANT.

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 27, 1968.

1. IN ITS DECISION DATED DECEMBER 13TH, 1968 IN THIS MATTER, THE BOARD DIRECTED THAT THE APPLICANT ADVISE THE BOARD IN WRITING ON OR BEFORE DECEMBER 23RD, 1968 WHETHER, IN HIS OPINION, THE BOARD WAS IN ERROR IN ASSUMING THAT THE FACTS OF THIS CASE ARE AS SET OUT IN THE BOARD'S DECISION OF DECEMBER 13TH, 1968.

2. SINCE THE BOARD HAS NOT RECEIVED ANY COMMUNICATION FROM THE APPLICANT AS DIRECTED, THE BOARD IS SATISFIED THAT PURSUANT TO THE PROVISIONS OF SECTION 43(1) AND SECTION 46(1) OF THE LABOUR RELATIONS ACT, THIS APPLICATION IS UNTIMELY.

3. IN VIEW OF THESE CIRCUMSTANCES AND IN ACCORDANCE WITH THE PROVISIONS OF SECTION 46 OF THE BOARD'S RULES OF PROCEDURE, THE BOARD IS OF OPINION THAT THE APPLICANT HAS FAILED TO MAKE A PRIMA FACIE CASE FOR THE REMEDY REQUESTED AND THIS APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENT - LOCK-OUT UNLAWFUL

15368-68-U: AMALGAMATED TRANSIT UNION DIVISION 741 (APPLICANT) V.
THE SKINNER SCHOOL BUS LINES LIMITED (RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFFE
AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: S. HARE, THAKUR SINGH FOR THE APPLICANT,
AND B.H. STEWART, C.H. GARSIDE, B.R. DODDS FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 4, 1968.

1. THIS IS AN APPLICATION FOR A DECLARATION THAT A LOCKOUT WAS UNLAWFUL PURSUANT TO SECTION 68 OF THE LABOUR RELATIONS ACT. AT THE OUTSET, COUNSEL FOR THE APPLICANT STATED THAT HE WAS NOT PROCEEDING WITH RESPECT TO ANY ALLEGATIONS CONCERNING MR. THAKUR SINGH.

2. THE APPLICANT HAS ADDUCED EVIDENCE THAT ON WEDNESDAY, NOVEMBER 13TH, MR. THAKUR SINGH WAS DISMISSED FROM HIS EMPLOYMENT. AFTER HEARING OF HIS DISMISSAL, THE EMPLOYEES WITH WHOM WE ARE CONCERNED, GATHERED AROUND MR. SINGH AND WERE APPROACHED BY THE FOREMAN WHO ASKED "ARE YOU ALL WITH THAK (MR. SINGH)". AFTER THE EMPLOYEES INDICATED IN THE AFFIRMATIVE THE FOREMAN WENT TO THE SUPERVISOR'S OFFICE AND THEN RETURNED TO THE GROUP OF EMPLOYEES AND SAID "YOU BETTER ALL GO". AT THAT TIME THE EMPLOYEES LEFT THE PREMISES.

3. THERE WAS FURTHER EVIDENCE ADDUCED SUGGESTING THAT MR. SINGH WAS DISMISSED FOR UNION ACTIVITY AND THAT PREVIOUS TO THE MORNING OF NOVEMBER 13TH AT LEAST ONE EMPLOYEE HAD BEEN INTERROGATED ABOUT UNION ACTIVITY.

4. IN ANY EVENT REPRESENTATIVES OF THE EMPLOYEES WHO HAD LEFT THE PREMISES HAD A MEETING WITH OFFICIALS OF THE RESPONDENT ON THAT DAY AND A FURTHER MEETING WAS ARRANGED FOR NOVEMBER 14TH AT 7:30 A.M. WHICH THE EMPLOYEE REPRESENTATIVES ATTENDED TOGETHER WITH VARIOUS OFFICIALS OF THE RESPONDENT COMPANY. AT THAT MEETING MR. GARSIDE, THE GENERAL MANAGER OF THE COMPANY, INVITED ALL THE EMPLOYEES, WITH THE EXCEPTION OF MR. SINGH, TO RETURN TO WORK BY 9:30 THAT MORNING AND THAT IN THE EVENT THAT THEY DID NOT RETURN BY 9:30 THAT THEIR EMPLOYMENT WOULD BE TERMINATED. THIS WAS COMMUNICATED TO ALL THE EMPLOYEES CONCERNED. THE EMPLOYEES HOWEVER ELECTED NOT TO RETURN TO WORK AFTER BEING ADVISED THAT MR. SINGH COULD NOT RETURN.

5. BOTH THE APPLICANT AND THE RESPONDENT IN ARGUMENT, PLACED DIFFERENT INTERPRETATIONS ON THE EVENTS OF NOVEMBER 13TH WHICH LED TO THE EMPLOYEES LEAVING THE PREMISES. THE APPLICANT ALLEGED THAT THE EVENTS CONSTITUTED A LOCKOUT, WHILE THE RESPONDENT ALLEGED THAT THE EVENTS CONSTITUTED AN UNLAWFUL STRIKE. EVEN IF WE WERE

TO ASSUME, BUT WITHOUT FINDING THAT THE EVENTS OF NOVEMBER 13TH CONSTITUTED A LOCKOUT, WE FIND THAT ON NOVEMBER 14TH, 1968 THERE WAS AN UNEQUIVOCAL INVITATION TO THE EMPLOYEES TO RETURN TO WORK AND THAT ANY LOCKOUT WOULD HAVE TERMINATED ON THAT DAY. THERE WAS NO EVIDENCE THAT THE INVITATION WAS NOT BONA FIDE. SEE UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA (UE) AND JOYCE AND SMITH PLATING COMPANY LIMITED (HAMILTON) (1956) C.C.H. CANADIAN LABOUR LAW REPORTER, TRANSFER BINDER, '55-'59 216,049, C.L.S. 76-523. ACCORDINGLY, SUCH LOCKOUT, IF ANY, WAS NOT CONTINUING IN EFFECT AT THE DATE OF THE HEARING BY THE BOARD.

6. IN ALL THESE CIRCUMSTANCES THE BOARD IS NOT PREPARED TO ISSUE A DECLARATION.

7. THE APPLICATION IS THEREFORE DISMISSED.

INDEXED ENDORSEMENTS - SECTION 65

14439-68-U: THE BAKERY AND CONFECTIONERY WORKERS INTERNATIONAL UNION OF AMERICA, LOCAL 264 (COMPLAINANT) V. THE GREAT ATLANTIC AND PACIFIC TEA CO. LIMITED (KNOWN AS A. & P. FOOD STORES) (RESPONDENT).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS H.F. IRWIN AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: L.A. MACLEAN, NEIL GROCUTT, FOR THE APPLICANT, AND D. CHURCHILL-SMITH, O.M. BOYCE FOR THE RESPONDENT.

DECISION OF H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBER H.F. IRWIN:

DECEMBER 5, 1968.

1. THIS IS A COMPLAINT MADE PURSUANT TO THE PROVISIONS OF SECTION 65 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT COMPLAINS THAT THE AGGRIEVED PERSON, DONALD SABEAN, WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF SECTIONS 48, 50 (A)(B)(C) AND 52 OF THE LABOUR RELATIONS ACT. THE COMPLAINANT REQUESTS THAT THE AGGRIEVED PERSON BE REINSTATED IN HIS EMPLOYMENT WITH COMPENSATION FOR LOSS OF EARNINGS AND EMPLOYMENT BENEFITS.

2. THE EVIDENCE OF THE AGGRIEVED PERSON IS IN PART, AS FOLLOWS. HE WAS EMPLOYED BY THE RESPONDENT IN ITS BAKERY DIVISION FROM MARCH 1966 TO THE DATE OF HIS DISMISSAL, APRIL 3RD, 1968. HE WORKED ON THE CHUTE, PACKING BREAD FOR DELIVERY. HE WAS INVOLVED IN THE APPLICANT'S ORGANIZING CAMPAIGN OF WHICH HE BECAME AWARE IN FEBRUARY AND HE SIGNED AN APPLICATION FOR MEMBERSHIP CARD IN MARCH AND THEREAFTER OBTAINED NAMES AND ADDRESSES OF OTHER EMPLOYEES WHO INDICATED

TO HIM THAT THEY WANTED TO JOIN. THE CAMPAIGN WAS THEN WELL KNOWN AMONGST THE EMPLOYEES AND HE SPOKE TO THESE PERSONS IN VARIOUS AREAS IN THE PLANT DURING WORKING HOURS. HE SAID THAT HE WORKED MAINLY ON THE GROUND FLOOR BUT AS WELL SOMETIMES ON THE SECOND. HE DID NOT TELL ANY SUPERVISORS ABOUT HIS ACTIONS IN THIS REGARD AS HE DID NOT WANT THEM TO KNOW ABOUT THEM. ON APRIL 3RD, HE WAS WORKING ON THE NIGHT SHIFT AND WORKED OVERTIME TO 5:00 A.M. PRIOR TO LEAVING THAT MORNING, SABEAN SAID, THAT OUTSIDE THE CHUTE IN THE SHIPPING DEPARTMENT, NEAL JACKSON, A LEAD HAND, ASKED HIM IF HE HAD BEEN "SHOOTING HIS MOUTH OFF ABOUT THE UNION". SABEAN DENIED IT. JACKSON THEN SAID THAT MR. IRVING, A SUPERVISOR, ASKED HIM WHICH ONE WAS SABEAN AND TOLD HIM THAT SABEAN WAS "GUNNING FOR THE UNION". A FEW MINUTES LATER THAT SAME MORNING, SABEAN SAID THAT HE OVERHEARD A CONVERSATION BETWEEN IRVING AND ANOTHER EMPLOYEE CONCERNING SOMETHING ABOUT A WATCH. SABEAN WAS IN THE CHUTE AND IRVING WAS OUTSIDE IT ON THE OTHER SIDE OF SOME CARTONS. HE THEN TOOK OFF HIS WATCH WHICH HE WAS WEARING AND PUT IT IN HIS POCKET. SABEAN ADMITTED HE KNEW HE WAS NOT SUPPOSED TO HAVE A WATCH ON AS IT WAS CONTRARY TO THE RULES OF THE BAKERY. HE SAW IRVING START TO WALK AWAY AND HE CALLED TO HIM AND ASKED IF HE COULD TALK TO HIM. IRVING CAME BACK AND SABEAN ASKED HIM "WHERE HE'D HEARD THAT I WAS SAYING ANYTHING ABOUT THE UNION," TO WHICH IRVING REPLIED THAT HE HAD NOT SAID THIS AND ANGRILY WALKED AWAY. THEN JACKSON CAME UP TO SABEAN WITH HIS FIST CLOSED AS IF TO STRIKE SABEAN AND SAID "I COULD KILL YOU, I'M TRYING TO GET YOU OUT OF TROUBLE AND YOU'RE PUTTING ME IN TROUBLE", AND THAT IRVING WANTED TO SEE HIM. JACKSON DID NOT SAY ANYTHING TO HIM ABOUT A WATCH. SABEAN WENT TO THE SHIPPING OFFICE TO SEE IRVING WHO THEN ASKED HIM "WHERE HE'D HEARD ABOUT THE UNION, DID YOU SAY NEAL?" SABEAN DENIED THIS AND TOLD IRVING THAT HE WOULD NOT TELL HIM. THEN IRVING TOLD SABEAN THAT HE HAD HAD HIS WATCH ON AND ALSO ASKED IF HE HAD ANY CIGARETTES. SABEAN REPLIED, NO. NEXT, IRVING TOLD SABEAN TO SEE MR. DALEY AT 3:00 P.M. THAT DAY. SABEAN ASKED WHY AND SAID "HE'D NEVER BEEN IN TROUBLE BEFORE". IRVING REPLIED THAT "HE'D PROBABLY NOT BE IN TROUBLE AGAIN WITH HIM", TO WHICH SABEAN RETORTED, "NO I MAY NOT HAVE A JOB". IRVING SAID THAT HE DID NOT KNOW ANYTHING ABOUT THAT. SABEAN SAID THAT HE HAD NEVER BEFORE BEEN UP TO SEE DALEY WHO IS A SUPERVISOR. HE ALSO SAID THAT MANY EMPLOYEES, INCLUDING SUPERVISORS, WEAR WATCHES AND JEWELLERY AND CARRY CIGARETTES AND PENCILS ETC. SABEAN ADMITTED THAT ABOUT ONE WEEK BEFORE THIS DATE HE HAD BEEN TOLD BY DALEY TO TAKE OFF HIS WATCH BUT NOTHING FURTHER WAS SAID OR DONE THEN. HE ALSO HAD BEEN WARNED ABOUT EATING PEANUTS ON THE JOB. ON THAT OCCASION, A FEW WEEKS PRIOR TO APRIL 3RD, DALEY CAME INTO THE SHIPPING AREA AND SAW SABEAN DROPPING PEANUT SHELLS INTO THE TRASH CAN. HE ASKED SABEAN WHERE HE GOT THEM AND SABEAN TOLD HIM THAT THEY WERE LYING ON THE TABLE AND DENIED THAT HE GOT THEM FROM THE PRODUCE DEPARTMENT.

SABEAN WAS THEN TOLD NOT TO TOUCH ANYTHING IN THE PRODUCE AS THERE HAS BEEN COMPLAINTS. DALEY TOLD HIM HE COULD BE DISMISSED BY THE HEAD OF THE PRODUCE DEPARTMENT IF THE PEANUTS WERE FROM THERE. NO ACTION WAS TAKEN AGAINST SABEAN AT THAT TIME. SABEAN SAID THAT THERE HAD BEEN NO COMPLAINTS ABOUT HIS JOB PRIOR TO HIS DISCHARGE. PRIOR TO LEAVING THAT DAY SABEAN SAID THAT JACKSON TOLD HIM "THAT IF THEY CAN YOU OVER THIS YOU OUGHT TO GO RIGHT TO THE LABOUR BOARD". HE ATTENDED DALEY'S OFFICE AND WAS ASKED TO SIGN A PAPER WHICH READ, AMONG OTHER THINGS, "REASON FOR TERMINATION: EATING PEANUTS AND WEARING A WATCH". SABEAN ASKED ABOUT DALEY'S MEANING OF "ATTITUDE" AND "PROGRESS" WHICH WORDS ALSO APPEARED ON THE FORM. DALEY TOLD HIM THAT HE WAS A GOOD WORKER BUT HE HAD NOT OBEYED THE COMPANY'S RULES NOT TO WEAR A WATCH WHILE WORKING. THE PAPER ALSO STATED THAT EMPLOYMENT WAS TERMINATED. SABEAN REFUSED TO SIGN IT AND LEFT.

3. FOLLOWING HIS TERMINATION, HE DID NOT WORK UNTIL JULY 2ND WHEN HE OBTAINED EMPLOYMENT AT DOMINION PAPER BOX COMPANY AND WORKED THERE ABOUT THREE MONTHS. HE THEN OBTAINED A JOB AT A PLUMBING COMPANY FOR TWO DAYS AND AT THE TIME OF THE HEARING WAS EMPLOYED AT PHILLIP CAREY COMPANY. HE ADMITTED THAT IN SEPTEMBER HE HAD MADE AN APPLICATION FOR A JOB IN ANOTHER DIVISION OF THE RESPONDENT AND TOLD THE BOARD THAT, "I DELIBERATELY FALSIFIED MY APPLICATION". HE FURTHER ADMITTED THAT THE NOTICE HEADED "TORONTO BAKERY EMPLOYEE REGULATIONS AND SAFETY RULES" IS POSTED IN THE SHOP AND THAT HE SIGNED A COPY AND HE ALSO SIGNED A COPY OF THE FORM HEADED "TORONTO BAKERY - SHOP RULES". HE SAID THAT HE DID NOT KNOW THAT EATING PEANUTS WAS AGAINST THE RULES BUT HE DID KNOW THAT THE BAKERY DID NOT WANT ANY FOREIGN OBJECTS IN THE BREAD. HE MAINTAINED THAT IN THE AREA WHERE HE WORKED, HE HANDLED ONLY WRAPPED BREAD WHICH COULD NOT BE AFFECTED BY THE SHELLS.

4. THE COMPLAINANT ALSO LEAD EVIDENCE THAT ITS ORGANIZING CAMPAIGN COMMENCED IN JANUARY 1968 AND AN APPLICATION FOR CERTIFICATION WAS MADE IN APRIL. LEAFLETS WERE DISTRIBUTED TO THE EMPLOYEES DURING THE EARLY PART OF FEBRUARY. A COMPLAINT UNDER THE PROVISIONS OF SECTION 65 WAS FILED IN MARCH 1968 BY THIS COMPLAINANT WITH RESPECT TO CLAIMS OF EVA RICCARDI AND DOMENIC RICCI. (BOARD FILE #14310-67-U). THAT CLAIM WAS DEALT WITH BY A PANEL OF THE BOARD DIFFERENTLY CONSTITUTED THAN IN THE PRESENT MATTER, AND A DECISION MADE IN SEPTEMBER 1968. WITHOUT SETTING OUT IN ANY DETAIL THE EVIDENCE, THIS BOARD DID HEAR AND CONSIDER THE EVIDENCE OF THOSE TWO EMPLOYEES IN THE INSTANT CASE. THE COMPLAINANT SUBMITTED SUCH EVIDENCE WAS RELEVANT TO THE BOARD'S ASSESSMENT OF THE REASONS GIVEN BY THE RESPONDENT FOR ITS ACTIONS WITH RESPECT TO THE AGGRIEVED PERSON.

5. FOR THE RESPONDENT, WILLIAM IRVING TESTIFIED THAT HE IS THE OPERATING SUPERINTENDENT AND THAT NEAL JACKSON IS A LEAD HAND. HE SAID HE KNEW WHO SABEAN WAS BEFORE APRIL 3RD, AS HE IS IN CHARGE OF THE ENTIRE OPERATIONS AT NIGHT. ON THAT NIGHT, IN THE SHIPPING AREA, ABOUT 4:45 A.M. HE NOTICED THAT SABEAN WAS WEARING A WATCH. HE TOLD HIM THAT HE WAS NOT SUPPOSED TO DO THAT, WHICH SABEAN ACKNOWLEDGED. THEN IRVING SAID THAT HE ASKED JACKSON TO GET SOMEONE TO REPLACE SABEAN AS HE WANTED TO SEE SABEAN IN THE SHIPPING OFFICE. THERE, HE TOLD SABEAN THAT HE SHOULD NOT BE WEARING A WATCH AS IT WAS AGAINST THE COMPANY REGULATIONS TO WHICH SABEAN REPLIED HE KNEW AND HE ADMITTED TO IRVING HE HAD SIGNED A FORM OUTLINING THE RULES AND REGULATIONS. IRVING KNEW OF AN INCIDENT ABOUT 10 DAYS PREVIOUS TO THIS WHEN SABEAN HAD BROKEN THE RULES. IRVING THEN TOLD SABEAN TO SEE MR. DALEY BEFORE GOING BACK TO WORK AGAIN. IRVING SAID THAT THIS WAS ALL THAT WAS SAID AT THIS TIME AND DENIED THAT SABEAN SAID ANYTHING TO HIM ABOUT THE UNION NOR DID HE SAY ANYTHING TO SABEAN ABOUT THE UNION. IRVING SAID THAT HE WAS AWARE OF THE UNION'S ORGANIZING CAMPAIGN BUT NOT THAT SABEAN WAS ONE OF THE ORGANIZERS OR THAT HE WAS OBTAINING SIGNATURES. HE SAID THAT IT WAS NOT COMMON PRACTICE FOR EMPLOYEES TO WEAR WATCHES HOWEVER, SOME OF THE SUPERVISORS DO, AS THEY ARE NOT SUBJECT TO THE RULES. IRVING ALSO DENIED HAVING ANY CONVERSATION WITH JACKSON ABOUT SABEAN'S UNION ACTIVITIES. IRVING SAID THAT HE MADE UP HIS MIND THAT SINCE THIS WAS THE SECOND TIME THAT HE WAS AWARE THAT SABEAN HAD BROKEN THE RULES "SOMETHING HAD TO BE DONE". IRVING TOLD DALEY ABOUT THE INCIDENT BUT HE SAID THAT HE DID NOT TELL SABEAN WAS "SHOOTING HIS MOUTH OFF ABOUT THE UNION", NOR ANYTHING ELSE ABOUT IT. IRVING ADMITTED THAT HE AND OTHERS WANTED TO KNOW WHO WAS SUPPORTING THE UNION AND HAD A SOURCE OF INFORMATION IN THIS RESPECT, BUT HE STATED THAT HE DID NOT KNOW OF SABEAN'S ACTIVITIES IN THIS REGARD. HE REPORTED THE INCIDENT TO DALEY CONCERNING THE WATCH BUT DID NOT DISCUSS WITH HIM THE PENALTY.

6. NEAL JACKSON'S EVIDENCE WAS THAT HE IS A WORKING FOREMAN IN THE SHIPPING DEPARTMENT ON THE NIGHT SHIFT. ABOUT 4:50 A.M. ON APRIL 3RD, IRVING ASKED HIM "IF THESE FELLOWS IN THE CHUTE WERE FAMILAR WITH SHOP RULES AND THAT THERE IS ONE WEARING A WATCH", AND HE POINTED TO SABEAN. JACKSON GOT SOMEONE TO REPLACE SABEAN AND ASKED SABEAN IF HE WAS WEARING A WATCH. SABEAN STUCK OUT HIS HAND AND SAID "YES, I FORGOT TO TAKE IT OFF." JACKSON SAID THAT HE TOLD SABEAN TO GO AND SEE IRVING AND HAD NOTHING FURTHER TO DO WITH SABEAN'S TERMINATION. JACKSON SAID HE HAD NEVER TALKED TO SABEAN ABOUT THE UNION OR HIS UNION ACTIVITIES NOR TO IRVING ABOUT SABEAN AND WAS NOT AWARE THAT HE WAS IN THE UNION. JACKSON SAID THAT HE WORE A WATCH BUT THAT NONE OF THE OTHER EMPLOYEES DO.

HE THOUGHT THAT SOME EMPLOYEES WERE TAKING NAMES FOR THE UNION BUT HE SAID HE DID NOT KNOW THAT SABEAN WAS DOING SO. LOTHAR BLOCK, PRODUCTION SUPERVISOR, TESTIFIED THAT HE WAS AWARE OF OTHER EMPLOYEES BEING TERMINATED FOR BREACHES OF THE COMPANY'S RULES IN THE LAST SEVERAL YEARS AND GAVE A FEW EXAMPLES TO THE BOARD, THE MOST RECENT OF WHICH PRIOR TO THE INSTANT MATTER OCCURRED IN JANUARY 1968.

7. THE REAL ISSUE FOR THE BOARD IN THIS MATTER IS THE QUESTION OF THE CREDIBILITY OF THE WITNESSES FOR EACH OF THE PARTIES. ON THE ONE HAND THERE IS THE EVIDENCE OF THE AGGRIEVED PERSON THAT HE WAS AN ORGANIZER FOR THE COMPLAINANT AND CIRCULATED ABOUT THE SHOP OBTAINING NAMES AND ADDRESSES OF OTHER EMPLOYEES WHO WERE INTERESTED IN THE UNION AND WHO FEELS THAT THIS IS THE REAL REASON THAT THE RESPONDENT TERMINATED HIS EMPLOYMENT. ON THE OTHER HAND THERE IS THE EVIDENCE OF BOTH IRVING AND JACKSON WHO, ALTHOUGH ADMITTING KNOWLEDGE OF THE UNION'S CAMPAIGN, DENIED THAT THEY KNEW THAT SABEAN WAS INVOLVED AND THAT THE REASON FOR HIS DISMISSAL WAS HIS BREACH OF THE RESPONDENT'S REGULATIONS ON AT LEAST TWO OCCASIONS. FURTHER, THE COMPLAINANT SUBMITS THAT THE INCIDENT MUST BE PLACED AGAINST THE BACKGROUND OF THE UNION'S ACTIVITIES IN ORGANIZING THE EMPLOYEES AND THE ANTI-UNION ACTIVITIES OF THE RESPONDENT SUBSTANTIATED BY THE DECISION OF THE BOARD IN FILE #14310-67-U. THERE ARE MANY AREAS OF CONFLICT BETWEEN THE TESTIMONY OF THE WITNESSES FOR THE RESPONDENT AND THAT OF THE AGGRIEVED PERSON AND THERE WAS LITTLE TO CHOOSE IN THE DEMEANOUR OF THE WITNESSES AND THE MANNER IN WHICH EACH OF THEM GAVE THEIR EVIDENCE. THE BOARD, HOWEVER, IN ASSESSING THE CLAIM OF THE AGGRIEVED PERSON IN THE CIRCUMSTANCES OF THE INSTANT CASE MUST LOOK TO THE CONTENT OF THE EVIDENCE BEFORE IT TO DETERMINE WHETHER THE COMPLAINANT HAS SATISFIED THE ONUS ON IT TO ESTABLISH THAT ON THE BALANCE OF PROBABILITIES, SABEAN WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE ACT.

8. IN GENERAL TERMS, WE WERE FAVOURABLY IMPRESSED WITH THE TESTIMONY OF IRVING WHO, IN OUR VIEW, GAVE A STRAIGHT FORWARD AND FRANK ACCOUNT OF THE CIRCUMSTANCES OF WHICH HE WAS AWARE TOUCHING ON THIS MATTER WHICH WAS UNSHAKEN UNDER CROSS-EXAMINATION AND WE ACCEPT HIS TESTIMONY WHERE IT CONFLICTS WITH THAT OF SABEAN'S. WE DO NOT HAVE THE SAME VIEW OF THE EVIDENCE OF JACKSON WHO APPEARED TO BE SOMEWHAT EVASIVE AND UNCLEAR IN HIS MEMORY OF THE EVENTS. IN ANY EVENT SABEAN ADMITTED THAT HE KNEW OF THE RESPONDENT'S RULES AND REGULATIONS WHICH HE HAD SIGNED AND THAT HE HAD BEEN WARNED ABOUT WEARING HIS WATCH ONE WEEK BEFORE HIS DISMISSAL YET HE CONTINUED TO DO SO AND THAT HE HAD BEEN SPOKEN TO BY MR. DALEY ABOUT EATING PEANUTS ON THE JOB. WE DO NOT ACCEPT SABEAN'S EVIDENCE THAT WHILE HE WAS IN THE CHUTE HE OVERHEARD A CONVERSATION

BETWEEN IRVING AND ANOTHER EMPLOYEE ABOUT A WATCH AND THEN HE PUT HIS IN HIS POCKET AND CALLED IRVING TO COME OVER AND ASKED HIM ABOUT THE UNION. THIS DOES NOT SEEM TO BE A REASONABLE ACTION FOR A PERSON WHO SAID THAT HE DID NOT TELL ANY SUPERVISOR ABOUT GETTING NAMES FOR THE UNION. IRVING'S ACCOUNT IN THIS REGARD IS MORE PROBABLE IN OUR ESTIMATION. WHATEVER MAY HAVE PASSED BETWEEN JACKSON AND SABEAN WE ARE SATISFIED THAT IRVING WAS ONLY CONCERNED WITH THE BREACH OF THE COMPANY'S RULES AND KNOWING THAT SABEAN HAD BEEN PREVIOUSLY WARNED FOR THE SAME THING, FELT THAT THIS HAD TO BE REPORTED, WHICH HE DID. IN FURTHER ASSESSING SABEAN'S TESTIMONY WE MUST FIND THAT HIS ADMITTED ACTIONS IN FALSIFYING AN APPLICATION FOR EMPLOYMENT FORM TO ANOTHER DIVISION OF THIS RESPONDENT MILITATES AGAINST HIS INTEREST IN THIS MATTER AND POINTS TO A CERTAIN ATTITUDE OF MIND NOT CONSISTENT WITH HONESTY.

9. THE BOARD IN CASES OF THIS NATURE, MUST BE SATISFIED ON SUBSTANTIAL CREDIBLE EVIDENCE THAT THE AGGRIEVED PERSON WAS DEALT WITH BY HIS EMPLOYER IN THE MANNER ALLEGED. IN THE INSTANT MATTER THERE IS CONSIDERABLE DOUBT IN OUR MINDS OF THE VERACITY OF THE AGGRIEVED PERSON'S EVIDENCE. ON THE OTHER HAND, THE RESPONDENT HAS PUT FORTH A PLAUSIBLE ACCOUNT OF THE EVENTS INCLUDING SUFFICIENT REASONS FOR ITS ACTIONS. THE BOARD IS NOT CALLED UPON TO DETERMINE THE APPROPRIATENESS OF THE POLICY OF THE RESPONDENT IN THIS MATTER. WE MUST CONCERN OURSELVES ONLY WITH THE MOTIVE OF THE RESPONDENT IN ITS ACTIONS QUA THE AGGRIEVED PERSON. IN THIS RESPECT WE ARE NOT SATISFIED ON THE EVIDENCE, THAT THE REASON FOR SABEAN'S DISMISSAL BY THE RESPONDENT WAS HIS ACTIVITIES ON BEHALF OF THE COMPLAINANT UNION.

10. ACCORDINGLY, HAVING REGARD TO ALL THE EVIDENCE AND TO THE REPRESENTATIONS OF THE PARTIES WE FIND THAT THE COMPLAINANT HAS NOT MET THE ONUS ON IT TO ESTABLISH THAT THE AGGRIEVED PERSON WAS DEALT WITH BY THE RESPONDENT CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AS ALLEGED.

11. THE APPLICATION IS DISMISSED.

DECISION OF BOARD MEMBER P.J. O'KEEFFE:

DECEMBER 4, 1968.

I AGREE WITH THE BASIC FACTS AS SET OUT IN THE DECISION OF THE MAJORITY. AS STATED BY MY COLLEAGUES, THE REAL ISSUE FOR THE BOARD IN THIS CASE IS THE QUESTION OF CREDIBILITY OF THE WITNESSES.

I WAS IMPRESSED WITH THE STRAIGHT FORWARD, UNHESITATING EVIDENCE OF SABEAN AND HAVE NO HESITATION IN ACCEPTING HIS EVIDENCE WHERE IT IS IN CONFLICT WITH EITHER IRVING OR JACKSON, WITNESSES FOR THE RESPONDENT.

I WOULD, THEREFORE, ORDER THE REINSTATEMENT OF SABEAN AND AWARD HIM FULL COMPENSATION FOR MONIES LOST BY HIM BECAUSE OF HIS DISMISSAL FOR LAWFUL UNION ACTIVITIES.

14600-68-U: SALVATOR IANIRI (COMPLAINANT) V. SKLAR DIVISION, STANCOR LIMITED AND UPHOLSTERERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 50 (RESPONDENTS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS P.J. O'KEEFE AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: R.B. POTTER, B.G. COLEMAN AND SALVATORE IANIRI FOR THE APPLICANT; G.S.P. FERGUSON, Q.C., ROBERT MCCOMB AND CLIFF ST. PIERRE FOR THE RESPONDENT STANCOR LIMITED; LEN MACLEAN AND MAE GRAHAM FOR THE RESPONDENT UNION LOCAL 50.

DECISION OF THE BOARD: DECEMBER 5, 1968.

1. THIS IS AN APPLICATION FOR RELIEF UNDER SECTION 65 OF THE LABOUR RELATIONS ACT IN WHICH THE COMPLAINANT ALLEGES THAT THE FOLLOWING PERSONS, MAIDO ROCCHETTA, MICHELE ROCCHETTA, SALVATOR IANIRI, RAFFAELE CIARLARIELLO, LUIGI CICCONE AND PINA CICCONE, HAVE BEEN DEALT WITH BY THE RESPONDENTS CONTRARY TO THE PROVISIONS OF SECTIONS 3, 50 AND 52 OF THE ACT. THE COMPLAINANT REQUESTS THAT THESE PERSONS BE REINSTATED AS EMPLOYEES OF THE RESPONDENT, SKLAR DIVISION, STANCOR LIMITED, WITH FULL PAY AND WITHOUT LOSS OF SENIORITY OR BENEFITS FROM THE DATE OF THEIR DISMISSAL.

2. THE ALLEGATIONS OF THE COMPLAINANT AS SET OUT IN HIS APPLICATION ARE AS FOLLOWS:

"ON OR ABOUT MARCH 8, 1968 THE AGGRIEVED PERSONS WERE DEALT WITH BY MR. ST. PIERRE, THE PERSONNEL MANAGER OF THE RESPONDENT SKLAR DIVISION, STANCOR LIMITED, CONTRARY TO THE PROVISIONS OF SECTION 50 OF THE LABOUR RELATIONS ACT IN THAT HE OR OTHER REPRESENTATIVES OF THE SAID RESPONDENT DISCHARGED THE AGGRIEVED PERSONS WITHOUT CAUSE BECAUSE THE AGGRIEVED PERSONS WERE MEMBERS OF A TRADE UNION AND WERE EXERCISING RIGHTS UNDER THE LABOUR RELATIONS ACT BY EXPRESSING DISAPPROVAL OF A RECENTLY CONCLUDED COLLECTIVE AGREEMENT BETWEEN THE RESPONDENTS.

IN OR ABOUT THE MONTHS OF MARCH AND APRIL, 1968, THE AGGRIEVED PERSONS WERE DEALT WITH BY MRS. MAE GRAHAM, THE BUSINESS REPRESENTATIVE OF THE RESPONDENT, UPHOLSTERERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 50, CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT

IN THAT SHE OR OTHER REPRESENTATIVES OF THE SAID RESPONDENT ACTED IN COLLUSION WITH THE RESPONDENT SKLAR DIVISION, STANCOR LIMITED TO WITHDRAW A GRIEVANCE LAUNCHED PURSUANT TO THE PROVISIONS OF A COLLECTIVE AGREEMENT BETWEEN THE RESPONDENTS BY THE RESPONDENT UPHOLSTERERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 50, WITH RESPECT TO THE DISCHARGE OF THE AGGRIEVED PERSONS."

3. AT THE CONCLUSION OF THE COMPLAINANT'S CASE, BOTH RESPONDENTS MOVED FOR A DISMISSAL OF THE APPLICATION ON THE GROUNDS THAT THE ALLEGATIONS AND THE EVIDENCE ADDUCED WITH RESPECT THERETO DID NOT ESTABLISH ANY OFFENCE UNDER THE LABOUR RELATIONS ACT BY EITHER OF THE RESPONDENTS. THE BOARD RESERVED ITS DECISION WITH RESPECT TO THESE MOTIONS.

4. THE BOARD HAS CAREFULLY REVIEWED ALL THE EVIDENCE AND THE SUBMISSION OF COUNSEL FOR THE PARTIES CONCERNED. WITH RESPECT TO THE ALLEGATION HAVING TO DO WITH THE INCIDENTS OF MARCH 8, 1968 SAID TO CONSTITUTE AN OFFENCE UNDER SECTION 50 OF THE ACT, THE BOARD FINDS THAT THERE IS NO EVIDENCE INDICATING THAT MR. ST. PIERRE OR ANY OTHER PERSONS ACTING ON BEHALF OF THE CORPORATE RESPONDENT ACTED IN ANY WAY CONTRARY TO THE LABOUR RELATIONS ACT WITH RESPECT TO THE AGGRIEVED PERSONS.

5. AS TO THE ALLEGATIONS WITH REFERENCE TO THE MATTERS SAID TO HAVE OCCURRED IN MARCH AND APRIL 1968, THE BOARD FINDS THAT THE EVIDENCE DOES NOT ESTABLISH THAT MRS. MAE GRAHAM OR THE UPHOLSTERERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 50, ACTED IN COLLUSION WITH THE RESPONDENT SKLAR DIVISION, STANCOR LIMITED, TO WITHDRAW A GRIEVANCE LAUNCHED PURSUANT TO THE PROVISIONS OF A COLLECTIVE AGREEMENT. IN FACT THERE IS NO EVIDENCE WHATSOEVER TO INDICATE THAT THE COMPANY WAS AWARE AT ANY TIME PRIOR TO THE START OF THESE PROCEEDINGS OF THE EXISTANCE OF ANY GRIEVANCES INITIATED.

6. HAVING REGARD TO ALL THE EVIDENCE, THE BOARD CAN FIND NONE TO SUPPORT THE CHARGE THAT THE UNION VIOLATED ANY OF THE PROVISIONS OF THE LABOUR RELATIONS ACT.

7. IN LIGHT OF THE FOREGOING, THE BOARD DISMISSES THE APPLICATION.

14960-68-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 1687 (COMPLAINANT) v. NORRENA ELECTRIC LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
H.F. IRWIN AND P.J. O'KEEFE.

APPEARANCES AT THE HEARING: A. GEMUS FOR THE APPLICANT, AND
N.J. NADEAU FOR THE RESPONDENT.

DECISION OF THE BOARD: OCTOBER 30, 1968.

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2. FOR REASONS TO BE GIVEN IN WRITING, BOARD MEMBER IRWIN
DISSENTING, THE BOARD DIRECTS;

(1) THE RESPONDENT SHALL FORTHWITH REINSTATE AND EMPLOY
RENE TAILLEFER, ROGER DICAIRE, RICHARD ALLEN AND
ANTHONY MCKENZIE IN THE SAME OR LIKE EMPLOYMENT AS
EACH HAD AT THE DATE OF HIS DISCHARGE. INsofar AS
MCKENZIE IS CONCERNED, WE WISH TO POINT OUT THAT
WHILE HIS FAILURE TO PRODUCE THE CERTIFICATE WHICH
HE LED NORRENA TO BELIEVE HE POSSESSED, WOULD
CONSTITUTE JUST CAUSE FOR DISMISSAL, WE DIRECT HIS
REINSTATEMENT BECAUSE WE FIND THAT IT WAS FOR UNION
ACTIVITY AND NOT FOR THE FAILURE TO PRODUCE THE
CERTIFICATE THAT HE WAS ACTUALLY DISCHARGED.

3. THE QUESTION OF COMPENSATION WILL BE DEALT WITH IN THE
WRITTEN REASONS TO FOLLOW.

WRITTEN REASONS

14960-68-U: INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL
UNION 1687 (COMPLAINANT) V. NORRENA ELECTRIC LIMITED (RESPONDENT).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
H.F. IRWIN AND P.J. O'KEEFE.

DECISION OF VICE-CHAIRMAN RORY F. EGAN AND BOARD MEMBER
P.J. O'KEEFE: DECEMBER 17, 1968.

1. IN CONFORMITY WITH ITS DECISION OF OCTOBER 30, 1968, THE
BOARD HEREIN SETS OUT ITS REASONS AND ITS DIRECTION WITH RESPECT TO
THE QUESTION OF COMPENSATION.

2. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS
ACT IN WHICH IT IS ALLEGED THAT RICHARD ALLEN, A. MCKENZIE, GILBERT
DICAIRE AND RENE TAILLEFER WERE DEALT WITH BY THE RESPONDENT CONTRARY
TO THE PROVISIONS OF SECTION 50 SUBSECTIONS (A) AND (C) OF THE LABOUR
RELATIONS ACT. THE COMPLAINANT REQUESTS THAT ALL THESE EMPLOYEES BE
REINSTATED IN EMPLOYMENT WITHOUT LOSS OF WAGES.

3. THE POSITION OF THE RESPONDENT WITH RESPECT TO THE DIS-
CHARGE OF THE FOUR EMPLOYEES WAS BASICALLY AS FOLLOWS: WITH RESPECT

TO RICHARD ALLEN, THE RESPONDENT TOOK THE POSITION THAT THIS EMPLOYEE HAD NOT BEEN DISCHARGED, BUT VOLUNTARILY LEFT THE EMPLOY OF THE COMPANY. IT CONTENDED THAT THE THREE OTHER AGGRIEVED PERSONS WERE NOT DISMISSED BY REASON OF ANY SUSPICION ON THE PART OF THE RESPONDENT THAT THEY HAD SIGNED A UNION CARD, BUT THAT THEY HAD BEEN DISMISSED FOR THE FOLLOWING REASONS:

- (A) RENE TAILLEFER - THIS EMPLOYEE'S WORK HAD, FOR THE THREE MONTHS PRIOR TO HIS DISMISSAL, BEEN COMPLETELY UNSATISFACTORY. IN ADDITION, HE REFUSED TO ACCEPT AN ADDITIONAL HOURLY SUM OFFERED TO HIM TO COMPENSATE FOR WORK BEING DONE IN SUDBURY, AND INDICATED TO THE RESPONDENT THAT HE WOULD NOT TAKE THE AMOUNT ORIGINALLY SUGGESTED. HE HAD CUT A CABLE SHORT AND PERMISSION HAD TO BE SOUGHT OF THE HYDRO TO SPLIT AND USE IT ON THE JOB IN QUESTION. HE HAD ALSO PLACED SOME PLUGS IN AN UNSAFE PLACE. THE CABLE INCIDENT OCCURRED SOME 3 WEEKS TO A MONTH BEFORE DISCHARGE, AND THE MATTER OF THE PLUGS ABOUT A WEEK PRIOR TO DISCHARGE.
- (B) ANTHONY MCKENZIE - THIS EMPLOYEE WAS HIRED ON JULY 22ND AS A PROPERLY QUALIFIED ELECTRICIAN. THE EMPLOYEE REPRESENTED TO THE RESPONDENT THAT HE WAS QUALIFIED BY CERTIFICATE, AND WHEN REQUESTED TO PRODUCE THE SAME WAS UNABLE TO DO SO. THE RESPONDENT WAS UNABLE TO CONTINUE EMPLOYING THIS EMPLOYEE BY REASON OF THE FACT THAT A NUMBER OF APPRENTICES WERE EMPLOYED BY THE RESPONDENT REQUIRING SUPERVISION. IT IS ALLEGED THAT THIS EMPLOYEE IN FACT IS NOT A QUALIFIED ELECTRICIAN. THE RESPONDENT FURTHER ALLEGES THAT WHEN THIS EMPLOYEE WAS HIRED IT WAS UPON THE BASIS OF THE THEN CONTRACTS AND WORK BEING PERFORMED BY THE RESPONDENT. THE CONTRACT UPON WHICH THIS EMPLOYEE WORKED WAS AT THE TIME OF HIS BEING LAID OFF, COMPLETED.
- (C) ROGER DICAIRE - THIS EMPLOYEE WAS HIRED ON THE BASIS OF BEING A JOURNEYMAN ELECTRICIAN, QUALIFIED UNDER THIS PROVINCE. HE WAS REQUESTED A NUMBER OF TIMES BY THE RESPONDENT AND BY THE REPRESENTATIVE OF THE DEPARTMENT OF LABOUR TO PRODUCE HIS CERTIFICATE OF QUALIFICATION, BUT EITHER REFUSED OR NEGLECTED TO DO SO. HE WAS ALSO HIRED UPON THE SAME BASIS AS THE EMPLOYEE MCKENZIE, AS REGARDS THE WORK AND CONTRACTS BEING THEN PERFORMED BY THE RESPONDENT AND THE PROJECT UPON WHICH HE WAS WORKING WAS COMPLETED AT THE TIME OF HIS BEING LAID OFF. HE FINALLY DID PRODUCE A CERTIFICATE ON JULY 29TH.

4. EDWARD NORRENA GAVE TESTIMONY IN SUPPORT OF THESE POSITIONS AND STATED THAT THE FACTS WERE THOSE UPON WHICH THE DISCHARGES WERE BASED.

5. WITH THE POSSIBLE EXCEPTION OF ALLEN, THE ALLEGED CAUSES OF DISCHARGE IN EACH CASE INVOLVES A HISTORY OF CONDUCT RATHER THAN A SPECIFIC EVENT OCCURRING ON OR ABOUT THE DATE OF DISCHARGE. IN SAYING THIS, WE ARE NOT UNMINDFUL OF THE INCIDENTS OF THE CABLE AND PLUGS CITED WITH RESPECT TO TAILLEFER. THE EVIDENCE TENDS TO ESTABLISH A CHRONIC RATHER THAN IMMEDIATE COMPLAINT ON BEHALF OF THE EMPLOYER. ALL THE EMPLOYEES, HOWEVER, WERE DISCHARGED BETWEEN JULY 29TH AND AUGUST 1ST, 1968.

6. MR. NORRENA FOR THE RESPONDENT STATED THAT NOTICE OF AN APPLICATION FOR CERTIFICATION BY THE APPLICANT WAS RECEIVED BY HIM ON JULY 29TH, 1968. A QUESTION ARISES AS TO WHETHER THE RECEIPT OF THE NOTICE AND THE FOUR DISCHARGES WERE RELATED, AS THE COMPLAINANT CONTENTS, OR MERELY COINCIDENTAL. THERE WAS EVIDENCE AS TO WHAT OCCURRED AT THE TIME OF EACH DISCHARGE.

7. THE COMPANY'S POSITION WITH RESPECT TO ALLEN AS NOTED, WAS THAT HE HAD QUIT OF HIS OWN VOLITION. ALLEN TESTIFIED THAT AS FAR AS HE WAS CONCERNED, HE DID NOT QUIT BUT WAS DISCHARGED.

8. ALLEN STATED THAT HE REPORTED FOR WORK ON JULY 30TH, 1968 AND FOUND ALL THE EMPLOYEES IN THE SHOP. HE STATED THAT E. NORRENA, THE OWNER, TOLD THE EMPLOYEES TO WAIT AND THAT HE WOULD SEE THEM ONE BY ONE IN HIS OFFICE. ALLEN WAS THE SECOND EMPLOYEE CALLED INTO THE OFFICE. HIS TESTIMONY IS THAT NORRENA STARTED TALKING AS SOON AS HE ENTERED THE OFFICE. THE CONVERSATION WAS AS FOLLOWS - NORRENA "YOU QUIT" ALLEN "NO" NORRENA "YOU WANT THE UNION - I DO NOT WANT THE UNION. I AM RUNNING A NON-UNION SHOP". ALLEN "I WANT TO WORK FOR YOU IN A UNION SHOP" NORRENA "THEN I BETTER GIVE YOU YOUR BOOK". AN ATTEMPT WAS MADE TO ESTABLISH THAT ALLEN HAD QUIT BECAUSE OF REMARKS HE WAS STATED TO HAVE MADE AT THE MEETING, PRIOR TO HIS INTERVIEW WITH NORRENA, INDICATING THAT HE FELT HE HAD NO FUTURE WITH THE COMPANY. ALLEN'S EXPLANATION OF THIS CONVERSATION WAS THAT HE HAD STATED THAT IF THE UNION DID NOT COME, HE WOULD NOT STAY. EDWARD NORRENA'S VERSION OF THE OFFICE INTERVIEW WAS THAT ALLEN HAD SAID HIS FATHER HAD WORKED FROM HAND TO MOUTH WITHOUT A UNION. THERE WAS NO FUTURE THERE "AND TO MAKE UP HIS TIME". IF THERE IS INDEED ANY CONFLICT HERE WE ACCEPT ALLEN'S ACCOUNT OF THE MATTER.

9. RENE TAILLIEFER ADMITTED CUTTING THE CABLE SHORT. HE SAID WITH RESPECT TO THE PLUGS THAT HE WAS FOLLOWING THE BLUE PRINT GIVEN TO HIM. E. NORRENA TESTIFIED THAT THE BLUE PRINT CARRIED WRITTEN

INSTRUCTIONS QUALIFYING THE DRAWINGS. (WE HAVE ALREADY NOTED THE LAPSE IN TIME BETWEEN THESE EVENTS AND THE DISCHARGE). HE TESTIFIED THAT EDWARD NORRENA ASKED HIM ON JULY 29TH IF HE HAD SIGNED FOR THE APPLICATION FOR CERTIFICATION. HE STATED HE DID NOT KNOW WHAT TO SAY AND REPLIED THAT HE DIDN'T KNOW. HE FELT THAT NORRENA KNEW THAT HE HAD SIGNED BECAUSE OF THE ANSWER HE, TAILLEFER, HAD GIVEN. UNDER CROSS-EXAMINATION HE SAID THAT ONCE HE KNEW THE APPLICATION FOR CERTIFICATION HAD, AS HE PUT IT "COME DOWN", HE HAD MADE THE STATEMENT THAT "WE HAVE GOT HIM NOW". THIS WAS PRIOR TO HIS DISMISSAL.

10. DICAIRE GAVE EVIDENCE WITH RESPECT TO EVENTS ON JULY 29TH, THE DATE THE NOTICE OF APPLICATION WAS RECEIVED. HE STATED THAT AT ABOUT 3 P.M., EDWARD NORRENA CAME TO THE JOB SITE AND ASKED HIMSELF AND ANOTHER EMPLOYEE IF THEY HAD SIGNED FOR THE UNION. DICAIRE SAID THAT THEY HAD NOT, NORRENA THEN SAID THAT HE HAD A PAPER FROM THE DEPARTMENT OF LABOUR SAYING THAT THE SHOP WAS TO BE CERTIFIED. ON HEARING THIS, DICAIRE THEN TOLD HIM THAT HE HAD SIGNED FOR THE UNION. THE EVIDENCE WAS THAT NORRENA THEN ASKED HIM IF HE KNEW WHAT THAT MEANT. WHEN DICAIRE SAID HE DID NOT KNOW, NORRENA TOLD HIM TO PICK UP HIS CHEQUE AT THE SHOP. DICAIRE RETURNED TO THE SHOP AT 4.30 P.M. AND FOUND A MEETING IN PROGRESS. HE SAID THAT NORRENA TOLD THE MEETING THAT IF THEY SIGNED EVERYTHING HE WANTED, HE WOULD KEEP EVERYONE AND NOBODY WOULD BE FIRED.

DICAIRE SAID HE ATTEMPTED TO SAY SOMETHING, BUT WAS TOLD BY NORRENA TO TALK WHEN HE WAS ASKED TO TALK AND TO SIT DOWN. HE STATED THAT NORRENA ASKED AT THE MEETING WHO HAD STARTED THE MOVE FOR CERTIFICATION. DICAIRE ADMITTED THAT HE HAD. NORRENA, IN HIS TESTIMONY, DENIED SAYING THAT ANYONE WHO HAD SIGNED FOR THE UNION WOULD BE FIRED.

11. MCKENZIE TESTIFIED THAT HE WAS WORKING FOR THE RESPONDENT AT CAMBRIAN COLLEGE ON JULY 29TH, 1968, WHEN EDWARD NORRENA CAME TO HIM AND ASKED HIM TO SIGN A PETITION. HE WAS NOT SURE WHAT WAS ON THE PETITION, BUT UNDERSTOOD IT HAD TO DO WITH FORMING A SHOP UNION. HE STATED THAT HE CAME IN TO THE SHOP ON JULY 30TH, 1968 AND FOUND THAT ALL THE EMPLOYEES WERE GATHERED THERE. EDWARD NORRENA WAS THERE AND ANNOUNCED THAT HE WOULD "TAKE YOU ONE AT A TIME - MCKENZIE, YOU'RE FIRST". NORRENA ASKED HIM WHY HIS CERTIFICATE WAS NOT ON THE WALL. MCKENZIE STATED HE DID NOT KNOW IT WAS SUPPOSED TO BE ON THE WALL. HE STATED THAT THE ONLY REASON GIVEN FOR HIS DISCHARGE WAS THAT HE DID NOT HAVE A CERTIFICATE. HE HAD BEEN EMPLOYED FOR A PERIOD OF SIX DAYS AND HAD BEEN PAID AS A JOURNEYMAN ELECTRICIAN. HE DOES NOT POSSESS A CERTIFICATE.

12. EDWARD NORRENA DENIED THAT HE HAD ASKED ANYONE TO SIGN A PETITION OF ANY KIND. HE STATED THAT HE HAD BEEN AWARE THAT TAILLEFER HAD BEEN TALKING ABOUT SIGNING A UNION CARD. HE HAD ALSO CHECKED WHEN HE HAD HIRED MCKENZIE AND DICAIRE. HE SAID HE DID NOT KNOW ABOUT THE OTHERS UNTIL THE 29TH OF JULY, 1968, WHEN

HE LEARNED THAT IT WAS 4 TO 4 ON THE ISSUE OF CERTIFICATION. HE SAID HE PUT THE GREEN NOTICE ON THE WALL, THEN TOLD THE EMPLOYEES THAT TO THOSE WHO HAD SIGNED THE CARDS HE HAD NOTHING TO SAY. HE POINTED OUT WHAT THOSE WHO HAD NOT SIGNED COULD DO FOR OR AGAINST THE UNION. HE TESTIFIED THAT HE SAID NOTHING ELSE.

13. THE RESPONDENT CALLED ALEC VARKIEURG TO TESTIFY WITH RESPECT TO THE QUESTION OF CERTIFICATION. HE STATED THAT HE HAD HEARD A DISCUSSION BETWEEN EDWARD NORRENA AND DICAIRE AND MCKENZIE, FROM WHICH HE UNDERSTOOD THAT THEY WERE TO BRING IN THEIR CERTIFICATES. THE WITNESS ALSO TESTIFIED THAT NORRENA HAD ASKED HIM IF HE HAD JOINED THE UNION. HE TOLD HIM THAT HE HAD JOINED. THE WITNESS COULD NOT RECALL WHAT NORRENA THEN SAID, BUT HE RECALLED THAT HE SHOOK HIS HEAD "AS IF HE DIDN'T SEEM TO REALLY APPROVE". THE WITNESS WENT ON TO SAY THAT NORRENA THEN POINTED OUT TO HIM HIS RIGHTS AND TOLD HIM TO READ OVER THE APPLICATION FOR CERTIFICATION - TO READ IT AND UNDERSTAND IT. (WE BELIEVE THE REFERENCE WAS TO THE NOTICE OF APPLICATION). THE WITNESS LATER SIGNED THE STATEMENT OF DESIRE OR PETITION. HE SAID HE HAD NEVER HEARD NORRENA SAY HE WOULD DISCHARGE ANYONE FOR JOINING THE UNION.

14. ALTHOUGH, FOR THE SAKE OF CONVENIENCE, REVIEWING THE EVIDENCE WE HAVE DEALT WITH EACH CASE INDIVIDUALLY, WE ARE OF THE OPINION THAT THE MATTERS RAISED IN THIS APPLICATION MUST BE TREATED AS INTEGRAL PARTS OF A WHOLE AND THAT AN OVERALL VIEW OF WHAT TRANSPIRED MUST BE TAKEN IN ORDER TO PROPERLY ASSESS THE SITUATION.

15. THE BURDEN OF PROOF IN MATTERS SUCH AS THIS IS PRIMARILY UPON THE UNION WHO MUST PRODUCE SUBSTANTIVE EVIDENCE IN SUPPORT OF THEIR ALLEGATIONS. IT HAS TO BE BORNE IN MIND THAT AN EMPLOYER'S NORMAL DISCIPLINARY POWERS ARE NOT SUSPENDED BY THE FACT THAT AN ORGANIZATIONAL CAMPAIGN IS IN PROGRESS AND CARE MUST BE EXERCISED TO SEE THAT THE REGARD BE GIVEN TO THE POSSIBILITY OF COINCIDENCE IN THE OCCURRENCES UNDER REVIEW. ON THE OTHER HAND, IT IS NO ANSWER TO A CHANGE OF THE NATURE HERE UNDER REVIEW FOR THE EMPLOYER TO SIMPLY ESTABLISH THAT THERE EXISTED JUST CAUSE FOR THE DISCIPLINARY ACTION IF THERE IS EVIDENCE TO INDICATE THAT THE TRUE MOTIVATION IN ADMINISTERING THE DISCIPLINE IS BASED UPON UNION ACTIVITY.

16. WE HAVE CAREFULLY REVIEWED THE EVIDENCE AND THE SUBMISSIONS OF COUNSEL IN THIS MATTER. WHEN CONSIDERATION IS GIVEN TO THE CHRONIC NATURE OF THE CONDUCT OF THE EMPLOYEES CONCERNED, SAID BY THE EMPLOYER TO HAVE MOTIVATED HIS ACTIONS, THE DATE OF THE ARRIVAL OF THE NOTICE OF THE APPLICATION FOR CERTIFICATION AND THE CLOSE PROXIMITY THERETO OF THE FOUR DISCHARGES, COUPLED WITH THE ACTIONS OF EDWARD NORRENA FOLLOWING RECEIPT OF THE NOTICE, WE ARE COMPELLED TO FIND THAT ALL FOUR AGGRIEVED PERSONS WERE DISCHARGED CONTRARY TO THE PROVISIONS OF THE LABOUR RELATIONS ACT AND NOT FOR THE REASONS ADVANCED BY THE RESPONDENT.

17. SECTION 65(4)(A) OF THE ACT PROVIDES, INTER ALIA, THAT THE BOARD, IF IT IS SATISFIED THAT THE PERSON CONCERNED HAS BEEN DISCHARGED CONTRARY TO THE ACT, SHALL DETERMINE WHAT THE EMPLOYER SHALL DO OR REFRAIN FROM DOING WITH RESPECT THERETO AND SUCH DETERMINATION MAY INCLUDE REINSTATEMENT IN EMPLOYMENT OF THE PERSON CONCERNED WITH OR WITHOUT COMPENSATION FOR LOSS OF EARNINGS AND OTHER EMPLOYMENT BENEFITS.

18. THE COMPENSATION, IF AWARDED, USUALLY CONSISTS OF A LUMP SUM GROSSLY CALCULATED ON THE BASIS OF THE HOURS OF WORK LOST MULTIPLIED BY THE RATE BEING EARNED AT THE DATE OF DISCHARGE. THE BOARD, HOWEVER, REQUIRES THE DISCHARGED EMPLOYEE TO TAKE STEPS TO SEEK EMPLOYMENT FOLLOWING DISCHARGE SO AS TO MITIGATE OR LESSEN HIS LOSSES. IF NO EFFORT AT MITIGATION IS MADE, THE BOARD MAY REFUSE TO ORDER COMPENSATION. IF A REASONABLE ATTEMPT TO FIND ALTERNATIVE EMPLOYMENT HAS BEEN MADE BUT NO WORK IS AVAILABLE, THE BOARD MAY AWARD COMPENSATION ON THE BASIS OF THE GROSS LOSS. WHERE EMPLOYEE HAS EARNED WAGES AND THE RATE EARNED IS LESS THAN THAT OF HIS FORMER JOB, THE BOARD, APPLYING THE MITIGATION OF DAMAGES PRINCIPLE, WILL MODIFY THE ESTIMATED LOSS BY THE AMOUNT EARNED BY THE EMPLOYEE DURING THE PERIOD BETWEEN THE DATE OF DISCHARGE AND THE DATE OF THE HEARING. IT WILL ALSO ORDER COMPENSATION FROM THAT DATE TO THE DATE OF REINSTATEMENT AT THE EMPLOYEE'S USUAL WAGE.

19. IT IS EVIDENT, OF COURSE, THAT THE COMPENSATION FOR LOSS SOUGHT CAN ONLY BE FOR THE SUM ACTUALLY LOST. THUS, WHERE A DISCHARGED EMPLOYEE OBTAINS ALTERNATIVE WORK AT EQUAL OR HIGHER RATES THAN THAT PREVIOUSLY EARNED BY HIM AS DID MCKENZIE, DICAIRE AND TAILLEFER IN THIS CASE, THE AMOUNT OF THE LOSS WHICH HE IS ENTITLED TO CLAIM IS LIMITED TO THE LOSS INCURRED BETWEEN THE DATE OF DISCHARGE AND THE DATE OF RE-EMPLOYMENT ON THE NEW JOB. HE CANNOT BE SAID TO BE ACCRUING LOSS AFTER THAT DATE. WHERE THE CLAIMING EMPLOYEE HAS MADE REASONABLE EFFORTS TO MITIGATE THE LOSS CLAIMED, HE IS ENTITLED TO COMPENSATION FOR SUCH LOSS IN FULL FROM THE TIME THE LOSS BEGAN UNTIL THE TIME IT CEASED BY REASON OF THE NEW EMPLOYMENT. IN THESE CIRCUMSTANCES, THE DATE OF HEARING HAS NO SIGNIFICANCE IN THE CALCULATION OF THE LOSS WHICH, AS INDICATED PREVIOUSLY, RUNS FROM THE DATE OF DISCHARGE TO THE DATE OF RE-EMPLOYMENT. WHAT OCCURS ONCE THE LOSS CEASES TO RUN IS OF NO FURTHER CONCERN TO THE BOARD IN CALCULATING THE COMPENSATION FOR LOSS. TO FIND OTHERWISE WOULD BE SIMPLY TO INVITE ARGUMENT OR POSTPONEMENT OF THE DATE OF FINAL CALCULATION INTERMINABLY ON THE SPECULATION THAT EARNINGS WOULD EVENTUALLY CATCH UP WITH LOSSES. FURTHERMORE, IT WOULD SEEM A PROPER CONSIDERATION TO NOTE THAT THE HIGHER EARNINGS ARE MADE DESPITE AND NOT SIMPLY AS THE RESULT OF THE IMPROPER DISCHARGE.

20. IN ACCORDANCE WITH THE FOREGOING AND HAVING IN MIND THE EVIDENCE HEARD IN THIS MATTER, THE BOARD FINDS THAT THE EMPLOYEES

CONCERNED TOOK REASONABLE STEPS TO MITIGATE THEIR LOSSES AND DIRECTS THAT AS COMPENSATION FOR THEIR LOSS OF WAGES AND EMPLOYMENT BENEFITS, CALCULATED FROM THE DATE OF DISCHARGE TO SEPTEMBER 9TH WITH RESPECT TO TAILLEFER, AUGUST 19TH WITH RESPECT TO DICAIRE, AUGUST 7TH IN THE CASE OF MCKENZIE, THESE BEING THE RESPECTIVE DATES ON WHICH NEW EMPLOYMENT WAS OBTAINED, AND TO THE DATE OF HEARING WITH RESPECT TO ALLEN, THE RESPONDENT SHALL FORTHWITH PAY TO THE AGGRIEVED PERSONS THE AMOUNT SET OUT OPPOSITE HIS NAME AS FOLLOWS:

RENE TAILLEFER	\$780.00
ROGER DICAIRE	390.00
ANTHONY MCKENZIE	182.00
RICHARD ALLEN	240.00

21. FURTHERMORE, THE RESPONDENT AND THE COMPLAINANTS SHALL MEET FORTHWITH WITH A VIEW TO AGREEING ON THE AMOUNT OF LOSS OF EARNINGS AND EMPLOYMENT BENEFITS, IF ANY, NOW SUSTAINED OR WHICH MAY HEREAFTER BE SUSTAINED BY EACH OF THE ABOVE NAMED EMPLOYEES BETWEEN THE DATE OF HEARING ON OCTOBER 18, 1968 AND THE DATE OF HIS ACTUAL RE-EMPLOYMENT BY THE RESPONDENT. IN DEFAULT OF AN AGREEMENT BETWEEN THE PARTIES WITHIN 7 DAYS AFTER THE RELEASE OF THIS DECISION OR WITHIN SUCH FURTHER PERIODS AS THE PARTIES MAY MUTUALLY AGREE UPON, THE AMOUNT OF ANY SUCH FURTHER COMPENSATION PAYABLE, IF ANY, WILL BE DETERMINED BY THE BOARD UPON THE MOTION OF EITHER PARTY FOR A FURTHER HEARING FOR THAT PURPOSE.

DECISION OF BOARD MEMBER H.F. IRWIN:

DECEMBER 17, 1968.

1. I DISSENT IN RESPECT OF THE REINSTATEMENT IN EMPLOYMENT OF ANTHONY MCKENZIE WITH COMPENSATION AND THE PAYMENT OF COMPENSATION FOR ALLEGED LOSS OF EARNINGS TO ROGER DICAIRE AND RENE TAILLEFER.

2. THE EVIDENCE ADDUCED AT THE HEARING IN THIS MATTER BEFORE THE BOARD WAS THAT WHEN HE WAS HIRED ON JULY 22, 1968 ANTHONY MCKENZIE DID NOT HAVE THE CERTIFICATE OF QUALIFICATION AS REQUIRED BY LAW TO PERFORM ELECTRICAL INSTALLATION WORK ON CONSTRUCTION PROJECTS. IT WAS STATED THAT THESE CERTIFICATES OF QUALIFICATION ARE ISSUED BY THE ONTARIO DEPARTMENT OF LABOUR AS A PUBLIC SAFETY MEASURE TO ENSURE THAT ONLY QUALIFIED ELECTRICIANS ARE PERMITTED TO PERFORM SUCH WORK. IN THE CIRCUMSTANCES, I AM IMPELLED TO REFUSE TO REINSTATE ANTHONY MCKENZIE IN EMPLOYMENT FOR WHICH HE ADMITTEDLY DID NOT POSSESS THE CERTIFICATE OF QUALIFICATION REQUIRED BY LAW NOR WOULD I HAVE GRANTED COMPENSATION IN LIEU OF REINSTATEMENT.

3. SECTION 65(4)(A) OF THE LABOUR RELATIONS ACT PROVIDES, INTER ALIA, THAT THE BOARD, IF IT IS SATISFIED THAT THE PERSON CONCERNED HAS BEEN DISCHARGED CONTRARY TO THE ACT, SHALL DETERMINE WHAT, IF ANYTHING, THE EMPLOYER SHALL DO OR REFRAIN FROM DOING WITH RESPECT THERETO AND SUCH DETERMINATION MAY INCLUDE REINSTATEMENT IN EMPLOYMENT OF THE PERSON CONCERNED WITH OR WITHOUT COMPENSATION FOR LOSS OF EARNINGS AND OTHER EMPLOYMENT BENEFITS.

4. IN THE PAST, PROVIDED THE AGGRIEVED EMPLOYEE HAS MADE REASONABLE EFFORTS TO MITIGATE HIS LOSS OF EARNINGS BY SECURING OTHER EMPLOYMENT, COMPENSATION, IF AWARDED, USUALLY CONSISTED OF A LUMP SUM PAYMENT AMOUNTING TO THE GROSS LOSS IN WAGES, IF ANY, BETWEEN WHAT THE EMPLOYEE WOULD HAVE EARNED ON HIS PREVIOUS JOB BETWEEN THE DATE OF HIS DISCHARGE AND THE DATE OF HIS REINSTATEMENT AND WHAT HIS ACTUAL EARNINGS WERE IN OTHER EMPLOYMENT, INTERMITTENT OR CONTINUOUS, DURING THE SAME PERIOD.

5. THE BOARD HAS STATED IN A NUMBER OF DECISIONS THAT SECTION 45 OF THE ACT, WHICH PERTAINS TO THE TERMINATION OF BARGAINING RIGHTS, IS NOT A PUNITIVE PROVISION AND IS TO BE USED AS A SHIELD AND NOT AS A SWORD. THE SAME PRINCIPLE, I BELIEVE, APPLIES TO SECTION 65. IT IS PURELY A REMEDIAL SECTION AND ITS PURPOSE IS TO ENSURE THAT THE POSITION OF THE AGGRIEVED EMPLOYEES HAS NOT BEEN WORSENERED AS A RESULT OF HIS DISMISSAL CONTRARY TO THE ACT. IT IS NOT INTENDED AS AN INSTRUMENT TO INFLICT PUNISHMENT UPON THE EMPLOYER. OTHER SECTIONS OF THE ACT ARE AVAILABLE FOR THAT PURPOSE IF SUCH ACTION IS DESIRED.

6. THE AGGRIEVED EMPLOYEES, ROGER DICAIRE AND RENE TAILLEFER, HAVE SUFFERED NO LOSS OF GROSS WAGES DURING THE STIPULATED PERIODS. INDEED, THEY HAVE EARNED CONSIDERABLY MORE IN WAGES THAN THEY WOULD HAVE EARNED IF THEY HAD NOT BEEN DISCHARGED BY THE RESPONDENT COMPANY AND HAD REMAINED IN ITS EMPLOY DURING THE SAME PERIOD. WHERE THERE HAS BEEN NO LOSS OF WAGES, AS HERE, SURELY THE AGGRIEVED EMPLOYEES ARE NOT ENTITLED TO COMPENSATION BECAUSE THERE IS NO LOSS OF WAGES TO COMPENSATE FOR. TO BE CONSISTENT IN APPLYING THE BOARD'S POLICY IN COMPUTING THE LOSS OF WAGES, IF ANY, OVER THE WHOLE PERIOD FROM THE DATE OF DISCHARGE TO THE DATE OF REINSTATEMENT, I WOULD HAVE DIRECTED THAT DICAIRE AND TAILLEFER BE REINSTATED IN EMPLOYMENT WITH THE RESPONDENT COMPANY BUT WITHOUT COMPENSATION.

7. I CONCUR IN THE REINSTATEMENT IN EMPLOYMENT OF RICHARD ALLEN AND THAT HE BE PAID THE ACTUAL LOSS OF WAGES SUFFERED BY HIM BETWEEN THE DATE OF HIS DISCHARGE AND THE DATE OF HIS REINSTATEMENT IN EMPLOYMENT WITH THE RESPONDENT COMPANY.

15178-68-U: RETAIL, WHOLESALE AND DEPARTMENT STORE UNION AFL:CIO:CLC
(COMPLAINANT) v. THE GOVERNOR AND COMPANY OF ADVENTURERS OF ENGLAND
TRADING INTO HUDSON'S BAY, OPERATING AS HUDSON'S BAY COMPANY
(RESPONDENT).

BEFORE: O.B. SHIME, VICE-CHAIRMAN AND BOARD MEMBERS P.J. O'KEEFE
AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: DONALD G. COLLINS, PETER KOLBASKA FOR
THE APPLICANT AND R.G. LOTHIAN, MISS E. SIMONSEN FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 6, 1968.

1. THE UNION IN THIS CASE HAS FILED A COMPLAINT PURSUANT TO SECTION 65 OF THE LABOUR RELATIONS ACT ALLEGING THAT JOANNE PRENTICE AND HELEN ADMISTON, TWO EMPLOYEES OF THE RESPONDENT HAVE BEEN DEALT WITH CONTRARY TO SECTION 59(1) OF THE LABOUR RELATIONS ACT.
2. MISS PRENTICE AND MISS ADMISTON HAD BEEN EMPLOYED BY THE RESPONDENT EACH FOR A PERIOD OF APPROXIMATELY TWO YEARS BEFORE THE PRESENT SET OF CIRCUMSTANCES AROSE. AT THE TIME OF THEIR HIRING THEY WERE HIGH SCHOOL STUDENTS AND DURING THE SCHOOL YEAR WORKED FOR APPROXIMATELY 15 HOURS PER WEEK, AND DURING THE SUMMER MONTHS THEY WORKED FOR APPROXIMATELY 30 HOURS PER WEEK.
3. BOTH OF THESE EMPLOYEES HAD NO INTENTION OF RETURNING TO SCHOOL IN THE FALL OF 1968. MISS PRENTICE HAD COMPLETED HER COURSE AND MISS ADMISTON DID NOT WISH TO RETURN. THEY DID, HOWEVER, CONTINUE TO WORK FOR THE RESPONDENT, DURING THE SUMMER OF 1968 AND CONTINUED IN THE SAME PATTERN AS PREVIOUS SUMMERS.
4. MISS EDMISTON TESTIFIED THAT IN EARLY JULY OF 1968 SHE HAD ASKED HER SUPERVISOR FOR FULL TIME WORK IF SHE COULD GET IT AND PARTICULARLY SHE REQUESTED FULL TIME WORK FOR SEPTEMBER 1968 BUT SHE DID NOT STATE THAT SHE WAS NOT RETURNING TO SCHOOL. HER SUPERVISOR REPLIED THAT SHE WOULD CHECK IF ANY WORK WAS AVAILABLE, BUT APPARENTLY NO FURTHER DISCUSSION ENSUED AND THE MATTER WAS LEFT IN ABEYANCE.
5. IN ANY EVENT BOTH EMPLOYEES CRYSTALLIZED THEIR THEIR SITUATIONS WITH THE RESPONDENT IN EARLY SEPTEMBER OF 1968.
6. MISS EDMISTON ON OR ABOUT THE 6TH OF SEPTEMBER, 1968 SPECIFICALLY INDICATED TO MRS. COLLIER A MEMBER OF MANAGEMENT, THAT SHE WAS NOT RETURNING TO SCHOOL. THE NEXT DAY SHE WAS ADVISED THAT HER EMPLOYMENT WITH THE RESPONDENT WOULD TERMINATE ON SEPTEMBER 28TH, 1968 AS IT WAS THE POLICY OF THE COMPANY NOT TO HIRE PART TIME EMPLOYEES WHO WERE SELF SUPPORTING. MISS EDMISTON TESTIFIED THAT SHE WAS NOT AWARE THAT THIS WAS COMPANY POLICY AND SHE ALSO TESTIFIED THAT SHE DID NOT KNOW OF ANY OTHER PERSON DISMISSED ON THAT BASIS.

7. MISS PRENTICE TESTIFIED THAT ON OR ABOUT SEPTEMBER 2ND, 1968 SHE SPOKE TO HER SUPERVISOR MRS. SWARTZ ABOUT MORE WORK AND THAT MRS. SWARTZ INDICATED SHE WOULD SUPPLY HER WITH MORE WORK. ON SEPTEMBER 5TH, 1968 SHE SPOKE TO ANOTHER SUPERVISOR ABOUT A JOB IN THE OFFICE OF THE RESPONDENT AND SHE WAS TOLD THAT THERE WAS A POLICY PREVENTING HER FROM WORKING. ON SEPTEMBER 7TH, 1968, MISS PRENTICE WAS ASKED BY MR. SIMONS, A REPRESENTATIVE OF THE RESPONDENT, IF IT WAS TRUE THAT SHE WASN'T GOING BACK TO SCHOOL. WHEN SHE INDICATED THAT SHE WAS NOT, SHE WAS TOLD THAT THE RESPONDENT WOULD HAVE TO DISMISS HER AS OF SEPTEMBER 28TH, 1968 AS SHE WAS SELF SUPPORTING.

8. THE RESPONDENT COMPANY THROUGH ITS PERSONNEL SUPERINTENDENT INTRODUCED EVIDENCE AS TO THE POLICY OF THE COMPANY AND FILED EXHIBIT 2 WHICH PURPORTED TO INDICATE THE COMPANY'S POLICY WHICH HAD BEEN IN EFFECT FOR APPROXIMATELY FIVE YEARS PRIOR TO THESE EVENTS. THE RELEVANT PORTIONS OF EXHIBIT 2 USED TO JUSTIFY THE RESPONDENT'S ACTS ARE AS FOLLOWS:

"PART-TIME STAFF (A) SELECTION

ONLY THOSE WHO MEET THE SELECTION STANDARDS AND WHO DO NOT REQUIRE FULL-TIME WORK FOR A LIVELIHOOD CAN BE EMPLOYED AS PART-TIME STAFF."

9. BOTH PARTIES AGREED THAT THE APPLICANT UNION HEREIN WAS CERTIFIED ON SEPTEMBER 12TH, 1968 AND THAT WRITTEN NOTICE OF A DESIRE TO BARGAIN WAS GIVEN ON SEPTEMBER 19TH, 1968 BY THE UNION IN ACCORDANCE WITH SECTION 11 OF THE LABOUR RELATIONS ACT.

10. THERE IS NO EVIDENCE THAT THE COMPANY WAS IN ANY WAY DEALING WITH THESE EMPLOYEES BECAUSE OF TRADE UNION ACTIVITY AND IN FACT THERE WAS NO EVIDENCE ADDUCED THAT MISS PRENTICE WAS A MEMBER OF THE UNION.

11. WE NOW TURN TO THE MERITS OF THIS CASE. SECTION 59(1) OF THE LABOUR RELATIONS ACT PROVIDES:

"WHERE NOTICE HAS BEEN GIVEN UNDER SECTION 11 OF SECTION 40 AND NO COLLECTIVE AGREEMENT IS IN OPERATION, NO EMPLOYER SHALL, EXCEPT WITH THE CONSENT OF THE TRADE UNION, ALTER THE RATES OF WAGES OR ANY OTHER FORM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY, OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES, AND NO TRADE UNION SHALL, EXCEPT WITH THE CONSENT OF THE EMPLOYER, ALTER ANY TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYER, THE TRADE UNION OR THE EMPLOYEES,

(A) UNTIL THE MINISTER HAS APPOINTED A CONCILIATION OFFICER OR A MEDIATOR UNDER THIS ACT, AND,

(I) SEVEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES THE REPORT OF A CONCILIATION BOARD OR MEDIATOR, OR

(II) FOURTEEN DAYS HAVE ELAPSED AFTER THE MINISTER HAS RELEASED TO THE PARTIES A NOTICE THAT HE DOES NOT DEEM IT ADVISABLE TO APPOINT A CONCILIATION BOARD,

AS THE CASE MAY BE; OR

(B) UNTIL THE RIGHT OF THE TRADE UNION TO REPRESENT THE EMPLOYEES HAS BEEN TERMINATED,

WHICHEVER OCCURS FIRST".

THE ISSUE IS WHETHER THERE HAS BEEN AN ALTERATION OF A "TERM OR CONDITION OF EMPLOYMENT OR ANY RIGHT, PRIVILEGE OR DUTY OF THE EMPLOYEES", WHERE NOTICE HAS BEEN GIVEN.

12. ONE OF THE REASONS FOR THE ENACTMENT OF SECTION 59(1), NO DOUBT, IS TO PREVENT, BY UNILATERAL ACTION, THE FRUSTRATING OR UNDERMINING OF THE STATUTORY OBJECTIVES OF ESTABLISHING WORKING CONDITIONS THROUGH COLLECTIVE BARGAINING DURING THE BARGAINING PERIOD. IN OFFICE AND TECHNICAL EMPLOYEES UNION, LOCAL 378 AND ESTABROOKS V. CASECO CONSULTANTS LIMITED (UNREPORTED) REFERRED TO IN HOSPITAL EMPLOYEES' UNION V. CRANBROOK AND DISTRICT HOSPITAL SOCIETY, 68 CLLC 11,721, AN EMPLOYEE WAS GIVEN NOTICE THAT HIS EMPLOYMENT WAS TO TERMINATE, PRIOR TO RECEIPT OF NOTICE FROM THE UNION TO COMMENCE COLLECTIVE BARGAINING AND HIS EMPLOYMENT WAS THEREAFTER TERMINATED. BROWN, J. STATED:

"THE NOTICE BY THE DEFENDANT WAS GIVEN BEFORE THE PLAINTIFF UNION HAD GIVEN ITS NOTICE TO COMMENCE BARGAINING, AND IT WOULD APPEAR TO ME FROM THE WORDING OF THE ACT THAT THE PROHIBITION IN SECTION 18(B) APPLIES TO THINGS ACTUALLY AND ACTIVELY DONE AFTER NOTICE TO COMMENCE COLLECTIVE (BARGAINING/SIC) HAS BEEN GIVEN, AND NOT TO THINGS THAT HAPPEN OR ARE MEANT TO HAPPEN AFTER THAT NOTICE IS GIVEN BY REASON OF HAVING BEEN PUT IN MOTION BEFORE THE PERIOD OF PROHIBITION HAS SET IN".

IN OUR VIEW THE REASONING OF THAT CASE IS APPLICABLE TO THE INSTANT CASE. AN EMPLOYER IS NOT PROHIBITED FROM TAKING UNILATERAL ACTION TO ALTER THE TERM OR CONDITIONS OF EMPLOYMENT PROVIDED THAT ACTION IS TAKEN PRIOR TO THE BARGAINING PERIOD WHICH COMMENCES WHEN NOTICE IS GIVEN. THIS TYPE OF ACTION IS SUBJECT TO THE INDIVIDUAL CONTRACTS OF EMPLOYMENT AND MUST NOT VIOLATE ANY OF THE OTHER PROVISIONS OF THE LABOUR RELATIONS ACT AND PARTICULARLY THOSE PROVISIONS RELATING TO UNFAIR PRACTICES.

13. WE FIND THEREFORE THAT ANY ALTERATION IN THE INSTANT CASE TOOK PLACE PRIOR TO THE BARGAINING PERIOD AND WAS BONA FIDE AND NOT FOR ANY IMPROPER PURPOSES NOR WAS IT SUGGESTED BY THE APPLICANT THAT THERE WAS AN IMPROPER MOTIVE IN TERMINATING EMPLOYMENT.

14. THE APPLICATION IS THEREFORE DISMISSED.

15377-68-U: RICHARD FREEMAN (COMPLAINANT) V. U.A.W. (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
D.B. ARCHER AND R.W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 10, 1968.

1. THIS IS A COMPLAINT UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. THE SUBSTANCE OF THE COMPLAINT IS THAT ON JULY 8, 1964 THE COMPLAINANT'S EMPLOYER, AMERICAN MOTORS OF CANADA LIMITED, LOCKED HIM OUT FROM HIS JOB AT ITS BRAMALEA WORKS FOR A PERIOD OF TWO WEEKS. THE COMPLAINANT IS STILL EMPLOYED BY AMERICAN MOTORS OF CANADA LIMITED. THE COMPLAINANT ALLEGES THAT FOLLOWING THE ALLEGED LOCK-OUT HE FILED A GRIEVANCE, PRESUMABLY UNDER THE TERMS OF THE THEN EXISTING COLLECTIVE AGREEMENT BETWEEN THE PRESENT RESPONDENT AND AMERICAN MOTORS. IT IS FURTHER ALLEGED THAT THE GRIEVANCE WENT THROUGH THE NECESSARY STEPS OF THE GRIEVANCE PROCEDURE AND WAS FINALLY SENT TO ARBITRATION IN OCTOBER OF 1964. HOWEVER, IT APPEARS THAT THE ARBITRATION BOARD DID NOT HEAR THE GRIEVANCE. SUBSEQUENTLY THE COMPLAINANT APPARENTLY FILED CHARGES UNDER THE UNION CONSTITUTION AGAINST THE PRESIDENT OF LOCAL 1285 OF THE RESPONDENT, THE CHARGE BEING THAT THE PRESIDENT FAILED TO PROCESS THE GRIEVANCE TO ARBITRATION AND, FURTHER, MADE FALSE STATEMENTS AS TO THE WHEREABOUTS OF THE GRIEVANCE. THE PRESIDENT WAS TRIED BEFORE A COURT SET UP BY THE LOCAL UNION AND WAS FOUND NOT GUILTY ON BOTH CHARGES. THE COMPLAINANT ALLEGES, FURTHER, THAT HE APPLIED FOR AN APPEAL BUT THAT THE CASE WAS NEVER APPEALED.

2. IN A COMPLAINT UNDER SECTION 65 IT MUST BE SHOWN THAT THE AGGRIEVED PERSON HAS BEEN DEALT WITH CONTRARY TO THE ACT. IN HIS STATEMENT TO THE FIELD OFFICER THE COMPLAINANT ALLEGES THAT HE WAS DEALT WITH CONTRARY TO SECTIONS 51(1), 56 AND 57(1) OF THE ACT. THERE IS NOTHING IN THE COMPLAINT OR IN THE COMPLAINANT'S STATEMENT TO THE FIELD OFFICER WHICH WOULD IN ANY WAY INDICATE THAT THE COMPLAINANT HAS BEEN DEALT WITH BY THE RESPONDENT TRADE UNION CONTRARY TO SECTIONS 51(1) OR 57(1). FURTHER, SECTION 56 WOULD NOT APPEAR TO BE APPLICABLE BECAUSE SECTION 1(1)(g) OF THE ACT DEFINES LOCK-OUT AS FOLLOWS:

"LOCK-OUT" INCLUDES THE CLOSING OF A PLACE OF EMPLOYMENT, A SUSPENSION OF WORK OR A REFUSAL BY AN EMPLOYER TO CONTINUE TO EMPLOY A NUMBER OF HIS EMPLOYEES, WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES, OR TO AID ANOTHER EMPLOYER TO COMPEL OR INDUCE HIS EMPLOYEES, TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THIS ACT OR TO AGREE TO PROVISIONS OR CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT OR THE RIGHTS, PRIVILEGES OR DUTIES OF THE EMPLOYER, AN EMPLOYERS' ORGANIZATION, THE TRADE UNION, OR THE EMPLOYEES; (EMPHASIS ADDED)

THE INSTANT COMPLAINT INVOLVES ONE EMPLOYEE AND NOT A NUMBER OF EMPLOYEES. MOREOVER, THERE IS NOTHING ALLEGED BY THE COMPLAINANT WHICH WOULD SUGGEST THAT HIS SUSPENSION WAS "WITH A VIEW TO COMPEL OR INDUCE HIS EMPLOYEES...TO REFRAIN FROM EXERCISING ANY RIGHTS OR PRIVILEGES UNDER THE ACT OR TO AGREE TO PROVISIONS OF CHANGES IN PROVISIONS RESPECTING TERMS OR CONDITIONS OF EMPLOYMENT" WITHIN THE MEANING OF THE SAID DEFINITION. IN ANY EVENT, IT IS QUITE CLEAR THAT SECTION 56 DEALS WITH AN EMPLOYER AND THERE IS NO SUGGESTION THAT THE RESPONDENT TRADE UNION HAD ANYTHING TO DO WITH HIS SUSPENSION.

3. EVEN ASSUMING THAT THE COMPLAINANT COULD IN SOME WAY ESTABLISH THAT HE WAS DEALT WITH CONTRARY TO THE ACT BY HIS EMPLOYER, THE SUBSTANCE OF HIS COMPLAINT IS AGAINST THE RESPONDENT TRADE UNION FOR FAILING TO PROCESS A GRIEVANCE THROUGH TO ARBITRATION. IN THIS REGARD THE BOARD HAS ON A NUMBER OF OCCASIONS MADE IT QUITE CLEAR THAT WHERE COMPLAINANTS HAVE A REMEDY UNDER THE PROVISIONS OF A COLLECTIVE AGREEMENT IT WILL NOT ENTERTAIN A COMPLAINT UNDER SECTION 65 EXCEPT IN EXCEPTIONAL CIRCUMSTANCES. THUS, IN THE HEIST INDUSTRIAL SERVICES CASE, 63 C.L.L.C. PARAGRAPH 16, 263, THE BOARD QUOTED FROM AN EARLIER DECISION, DOMINION STORES LIMITED (BOARD FILE NO. 2858-61-U) AS FOLLOWS:

IN THE NATIONAL SHOWCASE COMPANY CASE, (1960) CCH CANADIAN LABOUR LAW REPORTS, 16,185, C.L.S. 76-715, THE BOARD HELD THAT WHERE A COMPLAINT RAISES THE ISSUE THAT A PERSON HAS BEEN DISCHARGED CONTRARY TO THE PROVISIONS OF A COLLECTIVE AGREEMENT, THE MATTER IS ONE TO BE DEALT WITH UNDER THE TERMS OF THE COLLECTIVE AGREEMENT AND NOT BY MEANS OF A HEARING BY THE BOARD UNDER SECTION 65 OF THE ACT. THE COMPLAINANT IN THIS CASE APPEARS TO BE DISSATISFIED WITH THE DISPOSITION OF HIS CASE BY THE TRADE UNION WHICH WAS HIS BARGAINING AGENT. AS THE BOARD HELD IN THE WALLACE BARNES COMPANY CASE, (1961) CCH CANADIAN LABOUR LAW REPORTS, 16,198, C.L.S. 76-742, WHERE EMPLOYEES HAVE CHOSEN A BARGAINING AGENT TO ACT ON THEIR BEHALF, THEY ARE BOUND BY ITS ACTIONS AND, IF A COLLECTIVE AGREEMENT EXISTS, BY THE TERMS OF THAT AGREEMENT. AN EMPLOYEE IN THESE CIRCUMSTANCES MUST SEEK RELIEF UNDER THE AGREEMENT AND NOT BY AN APPLICATION TO THIS BOARD.

THERE ARE NO EXCEPTIONAL CIRCUMSTANCES ALLEGED IN THE PRESENT COMPLAINT WHICH WOULD BRING IT UNDER ANY OF THE EXCEPTIONS TO THE GENERAL RULE WHICH HAVE BEEN ESTABLISHED BY THE BOARD.

4. FINALLY, THE SUBJECT MATTER OF THIS COMPLAINT GOES BACK FOUR YEARS. THE LONG DELAY BETWEEN THE EVENTS COMPLAINED OF AND THE FILING OF THE COMPLAINT IS ITSELF SUFFICIENT REASON, IN OUR VIEW, FOR REFUSING TO INQUIRE FURTHER INTO THE MATTER.

5. HAVING REAGRD TO ALL THE ABOVE CONSIDERATIONS THE BOARD IS OF THE OPINION THAT IT OUGHT NOT TO INQUIRE FURTHER INTO THIS COMPLAINT AND IT IS ACCORDINGLY DISMISSED.

APPLICATION FOR DETERMINATION UNDER SECTION 79(2) DISPOSED OF DURING

DECEMBER

15200-68-M: RIDGETOWN DISTRICT HIGH SCHOOL BOARD (APPLICANT) V. CANADIAN UNION OF PUBLIC EMPLOYEES AND GEORGE SHOEMAKER (RESPONDENTS).

BEFORE: H.D. BROWN, VICE-CHAIRMAN AND BOARD MEMBERS O. HODGES AND J.E.C. ROBINSON.

APPEARANCES AT THE HEARING: E. HOREMBALA FOR THE APPLICANT, AND E.B. PARKER FOR THE RESPONDENT.

DECISION OF THE BOARD: DECEMBER 6, 1968.

1. THIS IS AN APPLICATION MADE PURSUANT TO THE PROVISIONS OF SECTION 79(2) OF THE LABOUR RELATIONS ACT. THE APPLICANT REQUESTS THE BOARD TO DETERMINE THAT CERTAIN PERSONS EMPLOYED AT THE PREMISES OF RIDGETOWN DISTRICT HIGH SCHOOL BOARD ARE EMPLOYEES OF THE RESPONDENT, GEORGE SHOEMAKER. ON THE 19TH OF JULY 1968, THE RESPONDENT UNION WAS CERTIFIED AS THE BARGAINING AGENT OF ALL EMPLOYEES OF RIDGETOWN DISTRICT HIGH SCHOOL BOARD ENGAGED IN MAINTENANCE, SERVICES AND PLANT OPERATIONS WITH CERTAIN EXCEPTIONS NOT HERE RELEVANT.
2. BY WAY OF A PRELIMINARY OBJECTION THE RESPONDENT UNION'S POSITION IN THIS MATTER IS THAT THE APPLICATION IS UNTIMELY AS NO BARGAINING BETWEEN THE PARTIES HAS TAKEN PLACE AND THAT THE QUESTION AS TO WHETHER THE PERSONS COMING UNDER THE DESCRIPTION OF THE BARGAINING UNIT ARE EMPLOYEES WAS DECIDED BY THE BOARD AT THE HEARING WITH RESPECT TO THE CERTIFICATION AND THAT THERE HAS BEEN NO CHANGE IN THE FACTS SINCE THAT DATE.
3. THE APPLICANT IN THIS MATTER DID NOT APPEAR AT THE HEARING WITH RESPECT TO THE APPLICATION FOR CERTIFICATION AND THE BOARD DEALT WITH THE MATTER ON THE EVIDENCE PRESENTED TO IT AT THAT TIME. FOLLOWING CERTIFICATION, HOWEVER, THE RESPONDENT IN THAT MATTER REQUESTED THE BOARD TO RECONSIDER ITS DECISION WHICH REQUEST WAS DENIED BY A DECISION OF THE BOARD DATED OCTOBER 21ST, 1968. THE UNION GAVE NOTICE TO BARGAIN TO THE APPLICANT ON AUGUST 9TH, 1968 TO WHICH THE APPLICANT REPLIED BY LETTER DATED AUGUST 14TH, 1968 ADVISING THE UNION THAT IT DID NOT HAVE REGULAR MEETINGS DURING JULY AND AUGUST AND THAT ITS NEXT MEETING WAS ON SEPTEMBER 16TH AT WHICH TIME THE UNION'S LETTER WOULD BE PRESENTED. THE INSTANT APPLICATION WAS MADE ON OCTOBER 9TH, 1968. THE PARTIES HAD NOT MET BETWEEN AUGUST 9TH AND NOVEMBER 21ST, 1968, THE DATE OF THE HEARING. AN APPLICATION FOR CONCILIATION WAS MADE ON NOVEMBER 19TH, 1968 AND A CONCILIATION OFFICER APPOINTED PRIOR TO THE DATE OF HEARING.
4. SECTION 79(2) OF THE ACT IS AS FOLLOWS:

IF, IN THE COURSE OF BARGAINING FOR A COLLECTIVE AGREEMENT OR DURING THE PERIOD OF OPERATION OF A COLLECTIVE AGREEMENT A QUESTION ARISES AS TO WHETHER A PERSON IS AN EMPLOYEE OR AS TO WHETHER A PERSON IS A GUARD, THE QUESTION MAY BE REFERRED TO THE BOARD AND THE DECISION OF THE BOARD THEREON IS FINAL AND CONCLUSIVE FOR ALL PURPOSES.

ON THE CIRCUMSTANCES OF THIS CASE OUTLINED ABOVE, THE UNION HAVING GIVEN TO THE APPLICANT NOTICE TO BARGAIN, HAS TAKEN A STEP IN THE BARGAINING PROCESS UNDER THE ACT WHICH IS A CONDITION PRECEDENT TO THE USUAL BARGAINING PROCESS OF MEETINGS ETC. WE FIND THAT THE PARTIES THEN ARE AS OF THE DATE OF THE HEARING IN THE "COURSE OF BARGAINING" WITHIN THE MEANING OF SECTION 79(2) AND THEREFORE THE BOARD HAS JURISDICTION TO CONSIDER THE APPLICATION.

5. DEALING WITH THE SECOND SUBMISSION OF THE RESPONDENT, THE APPLICANT HAS ALLEGED THAT THE CONTRACT WHICH WAS CONSIDERED BY THE BOARD AT THE HEARING WITH RESPECT TO THE APPLICATION FOR CERTIFICATION WAS SUPERSEDED BY A CONTRACT BETWEEN THE APPLICANT AND GEORGE SHOEMAKER EXECUTED ON JUNE 25TH, 1968 WHICH IS SUBSTANTIALLY DIFFERENT THAN THE CONTRACT BETWEEN THE APPLICANT AND ARCHIE MCLEON. AS OF THE DATE OF THE APPLICATION FOR CERTIFICATION THE MCLEON CONTRACT WAS IN FORCE. THE NEW CONTRACT BECAME EFFECTIVE ON JULY 1ST, 1968. CLEARLY, THEN THE EVIDENCE WHICH RELATED TO THE SITUATION AS OF THE DATE OF THE APPLICATION FOR CERTIFICATION WAS PROPERLY BEFORE THE BOARD AT THAT TIME AND ON WHICH THE BOARD MADE ITS DECISION. THE SITUATION, AT LEAST AS ALLEGED BY THE APPLICANT, CHANGED AFTER THE DATE SO THAT THE BOARD NOW IS NOT REVIEWING THE PRIOR DECISION OF THE BOARD. IN THE CIRCUMSTANCES OF THIS CASE, SINCE THERE IS AN ALLEGATION OF A CHANGE IN THE FACTS IN ISSUE ARISING AFTER A HEARING OF THE BOARD WHICH DEALT WITH AN APPLICATION FOR CERTIFICATION AND IT IS READILY APPARENT THAT THERE IS A DISPUTE BETWEEN THE PARTIES ARISING DURING THE COURSE OF BARGAINING THEN EITHER PARTY MAY AVAIL ITSELF OF THE PROVISIONS OF SECTION 79(2) FOR A DETERMINATION BY THE BOARD.

6. IN VIEW OF THE FOREGOING THE BOARD IS OF THE OPINION THAT IT HAS JURISDICTION TO ENTERTAIN THIS APPLICATION UNDER SECTION 79(2) TO DETERMINE WHETHER THE PERSONS IN QUESTION ARE EMPLOYEES OF GEORGE SHOEMAKER FOR THE PURPOSES OF THE ACT. FOR REFERENCE SEE THE CENTRAL SUPERMARKETS LIMITED CASE, BOARD FILE #12960-67-M.

7. MR. W. G. JACKSON, EXAMINER, IS AUTHORIZED TO INQUIRE INTO AND REPORT TO THE BOARD ON WHETHER THE PERSONS CONCERNED ARE EMPLOYEES OF THE APPLICANT.

JURISDICTIONAL DISPUTE

14500(A)-68-JD: ABITIBI PAPER COMPANY LTD. STURGEON FALLS DIVISION (COMPLAINANT) v. UNITED PAPER MAKERS AND PAPER WORKERS LOCAL 135 - A.F.L. - C.I.O. INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS - LOCAL NO. 71 A.F.L. - C.I.O. (RESPONDENTS).

BEFORE: J.H. BROWN, Q.C., ALTERNATE CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

APPEARANCES AT THE HEARING: R.T. CARTER, B.C. BARRINGTON,
F. CLARK AND W.E. FORTIN FOR THE COMPLAINANT, M.W. WRIGHT, Q.C.,
T.H. CURLEY AND R. RENDELL FOR UNITED PAPER MAKERS AND PAPER
WORKERS LOCAL 135, L.A. MACLEAN, N.A. PAXTON, J. SENEGAL AND
A. CULL FOR INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND
PAPER MILL WORKERS - LOCAL No. 71.

DECISION OF THE BOARD: DECEMBER 3, 1968.

1. THIS IS A COMPLAINT MADE UNDER SECTION 66 OF THE LABOUR
RELATIONS ACT.

2. THE COMPLAINANT OPERATES A PULP AND PAPER MILL AT
STURGEON FALLS WHICH PRODUCES CORRUGATING MEDIUM. FROM 1947 TO
1967 THE PULPMaking FACILITIES WERE A BATCH SYSTEM USING ROTARY
DIGESTERS AND REFINERS. IN JULY OF 1967 THE COMPLAINANT, AS PART
OF A PROGRAM OF MODERNIZING ITS PRODUCTION EQUIPMENT IN THE PULP
MILL, COMMENCED THE OPERATION OF A CONTINUOUS DIGESTER SYSTEM.

3. THE BATCH SYSTEM OPERATION REQUIRED A FIVE-MAN CREW PER
SHIFT IN THE FOLLOWING JOB CLASSIFICATIONS: CHIP CONVEYOR AND
LOADER MAN, COOK'S HELPER, DIGESTER COOK, REFINER OPERATOR'S
HELPER AND REFINER OPERATOR. THE PERSONS EMPLOYED IN THE FIRST
FOUR CLASSIFICATIONS WERE MEMBERS OF THE INTERNATIONAL BROTHERHOOD
OF PULP, SULPHITE AND PAPER MILL WORKERS, LOCAL 71 (HEREINAFTER
REFERRED TO AS THE PULP-SULPHITE UNION). THE PERSONS EMPLOYED IN
THE LATTER CLASSIFICATION WERE MEMBERS OF THE UNITED PAPER MAKERS
AND PAPER WORKERS, LOCAL 135 (HEREINAFTER REFERRED TO AS THE
PAPERMAKERS UNION). PRIOR TO 1964 THE REFINER OPERATOR'S HELPER
HAD BELONGED TO THE PAPERMAKERS UNION. UNDER THE BATCH SYSTEM
OPERATION THERE WERE TWO LINES OF PROMOTIONAL PROGRESSION. ONE
LINE ENCOMPASSED THE FIRST THREE JOB CLASSIFICATIONS, THAT IS,
CHIP CONVEYOR AND LOADER MAN, COOK'S HELPER AND DIGESTER COOK.
THE SECOND LINE ENCOMPASSED THE LATTER TWO CLASSIFICATIONS, THAT
IS, REFINER OPERATOR'S HELPER AND REFINER OPERATOR.

4. WITH THE COMMENCEMENT OF THE CONTINUOUS DIGESTER SYSTEM
THE COMPLAINANT REDUCED THE SIZE OF THE CREW PER SHIFT FROM FIVE
TO THREE UNDER THE FOLLOWING JOB CLASSIFICATIONS: NO. 1 PULPMAKER,
NO. 2 PULPMAKER AND UTILITY MAN. THE PERSONS ASSIGNED BY THE COM-
PLAINANT TO THE JOB OF NO. 1 PULPMAKER WERE THE REFINER OPERATORS
UNDER THE BATCH SYSTEM OPERATION AND ARE MEMBERS OF THE PAPERMAKERS
UNION. THE PERSONS ASSIGNED BY THE COMPLAINANT TO THE JOB OF NO. 2

PULPMAKER WERE COOKS OR COOK'S HELPERS UNDER THE BATCH SYSTEM OPERATION AND ARE MEMBERS OF THE PULP-SULPHITE UNION. THE PERSONS ASSIGNED BY THE COMPLAINANT TO THE JOB OF UTILITY MAN WERE CHIP CONVEYOR AND LOADER MEN UNDER THE BATCH SYSTEM OPERATION. THIS LATTER CLASSIFICATION WAS ELIMINATED BY THE COMPLAINANT IN MID-SUMMER OF THIS YEAR REDUCING THE SIZE OF THE CREW ON EACH SHIFT TO TWO, NO. 1 PULPMAKER AND NO. 2 PULPMAKER.

5. THE COMPLAINANT IS REQUESTING THAT THE BOARD MAKE A DIRECTION AS TO WHICH OF THE RESPONDENT UNIONS HAS JURISDICTION OVER THE WORK PERFORMED IN THE PULP MILL UNDER THE CONTINUOUS DIGESTER SYSTEM.

6. IN ORDER TO APPRECIATE THE CLAIMS TO JURISDICTION BEING MADE BY THE RESPONDENT UNIONS IT IS ESSENTIAL TO UNDERSTAND THE OPERATION OF THE BATCH SYSTEM AND THE CONTINUOUS DIGESTER SYSTEM AND THE DIFFERENCES BETWEEN THE TWO SYSTEMS. IT IS ALSO NECESSARY TO UNDERSTAND THE NATURE OF THE WORK THAT WAS PERFORMED BY THE FIVE-MAN CREW UNDER THE OLD SYSTEM, AND THE WORK BEING PERFORMED BY THE TWO-MAN CREW UNDER THE NEW SYSTEM.

7. BRIEFLY THEN, UNDER THE BATCH SYSTEM, WOOD CHIPS WERE FED FROM A BIN ON TO A CONVEYOR WHICH BY ELEVATOR WERE TAKEN TO A HIGHER LEVEL IN THE PLANT AND DEPOSITED ON THE FEED CONVEYOR FOR THE FIVE ROTARY DIGESTERS. THE CHIPS WERE REMOVED MANUALLY FROM THE CONVEYOR AND PLACED IN A ROTARY DIGESTER WHEN A BATCH OF CHIPS WAS ABOUT TO BE COOKED. A CHEMICAL COMPOSITION OF COOKING LIQUOR WAS PUMPED INTO THE ROTARY DIGESTER WITH THE CHIPS AND THE DIGESTER WAS THEN SEALED. THE PRESSURE IN THE DIGESTER WAS THEREUPON RAISED TO A PRESCRIBED LEVEL BY STEAM AND IN THIS PROCESS THE CHIPS WERE IMPREGNATED WITH THE CHEMICAL COOKING LIQUOR. AFTER THE CHIPS HAD BEEN COOKED A SPECIFIED PERIOD OF TIME, THE COOKING LIQUOR WAS BLOWN OUT OF THE DIGESTER INTO STORAGE TANKS WHERE IT WAS REFORIFIED TO THE PROPER CHEMICAL STRENGTH FOR FUTURE USE. THE CHIPS WERE THEN DEPOSITED IN A LEACH CASTER PIT LOCATED BELOW THE ROTARY DIGESTER. THE COOKED CHIPS WERE STORED IN THE LEACH CASTER PIT UNTIL SUCH TIME AS THEY WERE REQUIRED TO GO THROUGH THE REFINERY PROCESS. A NUMBER OF THE ROTARY DIGESTERS COULD BE IN OPERATION AT THE SAME TIME AT DIFFERENT STAGES IN THE COOKING PROCESS. THE WHOLE OPERATION OF COOKING A SINGLE BATCH OF CHIPS TOOK APPROXIMATELY FOUR HOURS. THE GENERAL DIVISION OF WORK IN THE COOKING PROCESS WAS THAT CHIP CONVEYOR AND LOADER MAN HAD THE RESPONSIBILITY FOR SEEING THAT THE CHIPS GOT FROM THE BIN TO THE ROTARY DIGESTERS. THE COOK AIDED BY THE COOK'S HELPER MADE THE COOKING LIQUOR AND LOOKED AFTER ALL PHASES OF THE ROTARY DIGESTER OPERATION INCLUDING THE DEPOSITING OF THE COOKED CHIPS IN THE LEACH CASTER PITS.

8. THE COOKED CHIPS WERE REMOVED FROM THE LEACH CASTER PITS BY MEANS OF A SCREW LEVELLING MECHANISM IN THE PITS. BY A CONVEYOR AND ELEVATOR THE CHIPS FLOWED ON TO THE FEEDER CONVEYOR FOR THE PRIMARY REFINERS. THE CHIPS THEN WENT THROUGH THE REFINERS IN WHICH PROCESS THEY WERE TRANSFORMED INTO PULP WHICH IS KNOWN AS STOCK. FROM THE PRIMARY REFINERS THE STOCK WAS DEPOSITED INTO A DILUTION CHEST WHERE WATER WAS ADDED. FROM THERE IT WENT TO THE BRAMMER CHEST. THE STOCK WAS THEN FURTHER REFINED THROUGH A SECONDARY REFINER (THE SPROUT WALDRON) AND DEPOSITED IN THE MACHINE CHEST. IN THE THREE CHESTS THE CONSISTENCY OF THE STOCK WAS REGULATED. FROM THE MACHINE CHEST THE STOCK WENT TO THE PAPER MACHINES. THERE WAS AN ELECTRICAL CONTROL PANEL FOR THE PRIMARY REFINERS AND A SEPARATE CONTROL FOR THE SECONDARY REFINER. THE REFINER OPERATOR HAD FULL CONTROL OVER THE REFINERY OPERATION FROM THE PRIMARY REFINERS TO THE MACHINE CHEST. THROUGHOUT THE WHOLE PROCESS HE HAD THE RESPONSIBILITY FOR DETERMINING THE CONSISTENCY OF THE STOCK THAT WAS ULTIMATELY FED TO THE PAPER MACHINES. THE REFINER OPERATOR HELPER UNDER THE DIRECTION OF THE REFINER OPERATOR WAS RESPONSIBLE FOR EXTRACTING THE COOKED CHIPS FROM THE LEACH CASTER PITS AND DEPOSITING THEM IN THE PRIMARY REFINERS. THE HELPER ALSO ASSISTED THE REFINER OPERATOR WITH THE REFINING OPERATIONS INCLUDING THE ADJUSTMENT AND CHANGING OF PLATES IN THE REFINERS.

9. UNDER THE NEW CONTINUOUS DIGESTER SYSTEM THE WOODEN CHIPS BY MEANS OF A WEIGHTOMETER CONVEYOR ARE DEPOSITED INTO A FLUME WHICH LEADS INTO A CHIP WASH TANK FILLED WITH "WHITE" WATER. FROM THERE THE CHIPS ARE PUT THROUGH A DE-WATERING SCREEN WHICH SIEVES OUT FOREIGN MATTER. THE CHIPS THEN FALL INTO A STEAMING VESSEL WHICH IS MAINTAINED AT A SPECIFIED TEMPERATURE WHERE THE CHIPS ARE HEATED. BY MEANS OF A SCREW FEEDER THE CHIPS ARE PRESSURED INTO AN IMPREGNATOR WHERE THE COOKING LIQUOR IS MAINTAINED AT A REGULATED LEVEL OF CONSISTENCY SO AS TO BE TOTALLY ABSORBED BY THE CHIPS. FROM THE DIGESTER THE CHIPS GO THROUGH A DEFIBRATOR WHERE THEY ARE BROKEN DOWN AND THEN ARE DEPOSITED IN A SURGE BIN. THE CHIPS GO FROM THE SURGE BIN ON TO A FEEDER CONVEYOR AND INTO THE PRIMARY REFINERS. THE STOCK IS DEPOSITED IN THE DILUTION CHEST. FROM THERE THE STOCK GOES THROUGH A WASHER WHICH REMOVES CHEMICAL SUBSTANCES AND INTO A HIGH DENSITY STORAGE CHEST. THE STOCK THEN GOES THROUGH THE BRAMMER CHEST, THE SECONDARY REFINER, THE MACHINE CHEST AND ON TO THE PAPER MACHINES.

10. NO 1 PULPMAKER HAS COMPLETE CONTROL OVER THE OPERATION OF ENTIRE CONTINUOUS DIGESTER SYSTEM. HE IS ASSISTED BY NO. 2 PULPMAKER WHO WORKS UNDER THE DIRECTION NO NO. 1 PULPMAKER. NO. 1 PULPMAKER SPENDS THE GREATER PART OF HIS TIME IN A ROOM ADJACENT TO THE PRIMARY REFINERS WHERE THERE IS A CENTRAL PANEL FROM WHICH

ALMOST THE ENTIRE SYSTEM IS REGULATED AND CONTROLLED. HE HAS THE PRIMARY RESPONSIBILITY FOR SETTING AND ADJUSTING THE CONTROLS TO ENSURE THAT EACH STEP IN THE COOKING AND REFINERY PROCESS MEETS SPECIFICATIONS AND THAT THE STOCK WHICH IS ULTIMATELY SENT ON TO THE PAPER MACHINES IS OF THE PROPER CONSISTENCY. NO. 2 PULPMAKER RELIEVES NO. 1 PULPMAKER IN THE PANEL ROOM WHEN THE LATTER GOES ELSEWHERE IN THE PLANT TO PERFORM SUCH FUNCTIONS AS STARTING UP THE CONTROLS FOR THE SECONDARY REFINER, TAKING TEST STOCK FROM THE REFINERS AND CHANGING OR ADJUSTING PLATES IN THE REFINERS. NO. 2 PULPMAKER SPENDS A MAJORITY OF HIS TIME IN THE PULP MILL. HE IS SOLELY RESPONSIBLE FOR MAKING THE COOKING LIQUOR WHICH OCCUPIES A FAIR PORTION OF HIS TIME. HE ALSO CHECKS THE WHOLE SYSTEM TO MAKE SURE THAT THERE IS A REGULAR FLOW OF CHIPS AND STOCK. IN PARTICULAR, HE CHECKS THE CHIP BIN, THE STEAMING VESSEL AND THE WASHER. HE ALSO HELPS NO. 1 PULPMAKER CHANGE AND ADJUST PLATES IN THE REFINERS. NO. 1 PULPMAKER AND NO. 2 PULPMAKER WORK IN CLOSE CO-OPERATION.

11. THE COOKING LIQUOR ITSELF IS PREPARED IN THE SAME WAY UNDER BOTH SYSTEMS. IN THE NEW SYSTEM, HOWEVER, THE LIQUOR IS STORED IN RESERVE OR AUXILIARY TANKS FROM WHICH IT IS AUTOMATICALLY PUMPED INTO THE IMPREGNATOR AS REQUIRED. BECAUSE OF THE REGULATION OF THE LEVEL OF THE LIQUOR IN THE IMPREGNATOR, THERE IS NO "BLOWING OUT" OF THE LIQUOR AS IN THE CASE OF THE ROTARY DIGESTERS. THE REFORTIFYING OF THE LIQUOR ACCORDINGLY IS NO LONGER REQUIRED. ANOTHER DIFFERENCE IS THAT THE CHIP WASH TANK, THE STEAMING VESSEL, THE IMPREGNATOR, DIGESTER, DEFIBRATOR, WASH AND HIGH DENSITY STORAGE CHEST ARE ALL NEW PIECES OF MACHINERY IN THE CONTINUOUS DIGESTER SYSTEM. THE ROTARY DIGESTERS AND LEACH CASTER PITS HAVE BEEN ELIMINATED. BASICALLY THE TREATMENT TO WHICH THE CHIPS AND LATER STOCK ARE SUBJECTED IS ESSENTIALLY THE SAME IN BOTH SYSTEMS. THE DIFFERENCE IS IN THE MACHINERY USED AND THE SEQUENCE IN WHICH THE CHIPS AND STOCK ARE TREATED. FURTHER, THERE IS AN APPRECIABLE INCREASE IN THE SPEED WITH WHICH THE WHOLE COOKING AND REFINERY PROCESSES ARE COMPLETED UNDER THE NEW SYSTEM.

12. ONE MAJOR DIFFERENCE BETWEEN THE TWO SYSTEMS IS THAT UNDER THE ROTARY DIGESTER SYSTEM THERE WAS A MINIMUM OF AUTOMATION, MOST FUNCTIONS BEING PERFORMED MANUALLY. UNDER THE CONTINUOUS DIGESTER SYSTEM, HOWEVER, ALMOST THE ENTIRE PROCESS IS AUTOMATED AND IS OPERATED FROM THE CENTRAL PANEL. THERE ARE A NUMBER OF EXCEPTIONS. MORE PARTICULARLY, THE SECONDARY REFINERS AND THE SUPPLY OF "WHITE WATER" ARE CONTROLLED AND REGULATED FROM LOCATIONS OTHER THAN THE CENTRAL PANEL. AS WELL,

CHECKS MUST BE MADE ON A CONTINUOUS BASIS TO ENSURE THAT THE WHOLE SYSTEM IS OPERATING SMOOTHLY, I.E., THAT THE CHIPS ARE FLOWING SMOOTHLY IN THE STEAMING VESSELS AND THAT THE WASHER IS PERFORMING AT THE REGULATED SPEED. TESTS ALSO MUST BE MADE ON BOTH THE QUALITY OF THE COOKING LIQUOR AND THE QUALITY OF THE STOCK. FURTHER, AS UNDER THE OLD SYSTEM, THE PLATES IN THE REFINERS HAVE TO BE MANUALLY ADJUSTED AND CHANGED.

13. FOR THE PURPOSES OF THIS COMPLAINT THE MOST SIGNIFICANT DIFFERENCE IN THE TWO SYSTEMS IS THE STORAGE OF THE COOKED CHIPS. UNDER THE OLD SYSTEM THE CHIPS WERE STORED IN THE LEACH CASTER PITS AT THE COMPLETION OF THE COOKING PROCESS AND REMAINED THERE UNTIL REQUIRED FOR THE REFINERS. THAT IS TO SAY, THERE WAS A CLEARLY IDENTIFIABLE BREAK BETWEEN THE COOKING PROCESS AND THE REFINING PROCESS. THE REFINING PROCESS COULD BE SHUT DOWN WHILE THE COOKING PROCESS REMAINED IN OPERATION. UNDER THE NEW SYSTEM THE COOKED CHIPS IMMEDIATELY GO INTO THE DEFIBRATOR WHICH IS THE FIRST STAGE OF THE REFINING PROCESS AND ARE THEN DEPOSITED IN THE SURGE BIN. THE SURGE BIN MOST CLOSELY RESEMBLES THE LEACH CASTER PITS IN THAT IT IS A STORAGE AREA. THE NOTABLE DIFFERENCE BETWEEN THE LEACH CASTER PITS AND THE SURGE BINS IS IN RESPECT TO THEIR STORAGE CAPACITY. THE COOKED CHIPS COULD BE STORED IN THE LEACH CASTER PITS FOR LENGTHY PERIODS WHILE THE COOKED AND PARTIALLY REFINING CHIPS CAN ONLY BE STORED IN THE SURGE BIN FOR A MAXIMUM PERIOD OF FIVE MINUTES. THE COOKING AND REFINING ACCORDINGLY ARE VIRTUALLY A CONTINUOUS OPERATION, BOTH PROCESSES BEING INTEGRATED AND INTERDEPENDENT.

14. THE CONSTITUTION OF THE PAPERMAKERS UNION PROVIDES THAT ITS JURISDICTION SHALL INCLUDE ALL WORKERS EMPLOYED IN THE PULP AND PAPER INDUSTRY. THE CONSTITUTION OF THE PULP-SULPHITE UNION, ON THE OTHER HAND, CLAIMS JURISDICTION OVER ALL WORKERS EMPLOYED IN AND AROUND GROUND WOOD MILLS, SULPHITE PULP MILLS, SODA PULP MILLS AND SULPHATE PULP MILLS. MORE SPECIFICALLY, HOWEVER, THE CONSTITUTION OF THE PULP-SULPHITE UNION PROVIDES FOR COMPLIANCE WITH THE JURISDICTIONAL AGREEMENT SIGNED WITH THE PAPERMAKERS UNION ON JUNE 10TH, 1909. SECTION 1 OF THAT AGREEMENT READS AS FOLLOWS:

IT IS HEREBY UNDERSTOOD AND AGREED THAT THE INTERNATIONAL BROTHERHOOD OF PAPER MAKERS SHALL HAVE JURISDICTION OVER THE FOLLOWING EMPLOYEES: IN NEWS, BAG, AND HANGING MILLS: ALL MACHINE ROOM HELP AND BEATER ENGINEERS, EXCEPT SWIPERS AND SWEEPERS. IT IS ALSO AGREED THAT IN ALL OTHER MILLS THAN THE CLASS ABOVE MENTIONED THE INTERNATIONAL BROTHERHOOD OF PAPER MAKERS SHALL HAVE

JURISDICTION OVER THE ABOVE REFERRED TO AND ALSO THE BEATERMEN AND THEIR HELPERS, FINISHERS, CALENDAR AND ROTARY MEN, THEIR HELPERS, AND CUTTERMEN. THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS SHALL HAVE AS MEMBERS OF ITS ORGANIZATION ALL OTHER PULP AND PAPER MILL HELP WHO ARE NOT CONNECTED WITH ANY OTHER INTERNATIONAL UNION.

THE OPERATIONS OF THE COMPLAINANT WHICH PRODUCES CORRUGATING MEDIUM OBVIOUSLY FALLS UNDER THE HEADING OF "ALL OTHER MILLS". THERE IS NO EVIDENCE BEFORE THE BOARD, ON WHICH IT IS PREPARED TO RELY, AS TO WHAT CLASSIFICATIONS IN THE RECENT OPERATIONS OF THE COMPLAINANT CORRESPOND TO "BEATERMEN AND THEIR HELPERS". THE ABOVE 1909 AGREEMENT, HOWEVER, IS REFERRED TO IN CORRESPONDENCE BETWEEN THE RESPONDENT UNIONS IN 1947, THE YEAR THAT THE COMPLAINANT RE-ACTIVATED ITS OPERATIONS. (THE COMPLAINANT CLOSED DOWN ITS PLANT DURING THE DEPRESSION AND WAR YEARS.) BY LETTER DATED MAY 29TH, 1947, PAUL L. PHILLIPS, WHO APPEARS TO HAVE BEEN A VICE-PRESIDENT OF THE PAPER-MAKERS UNION, WROTE TO JOHN P. BURKE, THE THEN PRESIDENT OF THE PULP-SULPHITE UNION, CONCERNING THE RE-OPENING OF THE COMPLAINANT'S OPERATIONS AND THE ESTABLISHMENT OF LOCALS OF BOTH UNIONS AT STURGEON FALLS. IN THAT LETTER PHILLIPS MADE THE FOLLOWING STATEMENT WITH REGARD TO THE AGREEMENT OF JUNE 10TH, 1909:

THE 1909 AGREEMENT IS VERY CLEAR ON THE JURISDICTION IN THIS TYPE OF MILL. UNDER THE PROVISIONS OF SECTION 1 OF THE AGREEMENT, IN THIS MILL THE PAPER MAKERS ARE ENTITLED TO ALL THE HELP ENGAGED IN STOCK PREPARATION, IN THE MACHINE ROOM AND IN THE FINISHING ROOM. THEREFORE, IN THE STURGEON FALLS MILL AND PAPER MAKERS WILL HAVE JURISDICTION OVER THE 7 MEN ON THE GLOBE ROTARY DIGESTERS AND THE 6 MEN ON THE REFINERS (THESE OPERATIONS ARE PURELY STOCK PREPARATION). THE 22 MEN ON THE PAPER MACHINE, THE 2 MEN IN FINISHING, AS WELL AS ANY OF THE 11 MAINTENANCE MEN WHO DEVOTE A MAJOR PORTION OF THEIR TIME IN THESE DEPARTMENTS.

BURKE, THE PRESIDENT OF THE PULP-SULPHITE UNION, REPLIED TO PHILLIPS, BY LETTER DATED JUNE 12TH, 1947, PART OF WHICH READS AS FOLLOWS:

FROM WHAT YOU WRITE, IT WOULD SEEM TO ME THAT THERE WILL BE ABOUT AN EQUAL DIVISION OF THE JURISDICTION AT STURGEON FALLS. OF COURSE, YOUR ORGANIZATION WILL HAVE JURISDICTION OVER THE MACHINE ROOM AND THE BEATER ROOM AND THE FINISHING ROOM IN THAT PLANT.

15. BY PHILLIPS LETTER, THE PAPERMAKERS UNION CLAIMED JURISDICTION OVER THE ENTIRE COOKING AND REFINING PROCESSES UNDER THE ROTARY DIGESTER SYSTEM. IT WOULD APPEAR, MOREOVER, THAT BURKE AGREED WITH THE ASSERTION TO JURISDICTION MADE BY PHILLIPS. WE ARE NOT ENTIRELY SURE WHAT IS MEANT BY THE DESIGNATION "BEATER ROOM". IN THE CONTEXT OF THE LETTERS, HOWEVER, IT WOULD SEEM TO REFER TO THE PULP MAKING PROCESS IN THE MILL.

16. THE CONSTITUTIONS OF THE RESPONDENT UNIONS OFFER NO ASSISTANCE TO THE BOARD BECAUSE OF THE BROAD AND GENERAL NATURE OF JURISDICTIONAL CLAIMS ASSERTED BY BOTH. THE 1909 AGREEMENT IS OF LITTLE MORE GUIDANCE BECAUSE OF ITS RELATIVE ANTIQUITY. BOTH THE TERMINOLOGY AND TECHNOLOGY OF THE INDUSTRY HAVE SO CHANGED IN THE INTERVENING SIXTY YEARS AS TO RENDER IT MEANINGLESS IN TODAY'S SETTING. FINALLY WHILE THE 1947 CORRESPONDENCE BETWEEN SENIOR OFFICIALS OF BOTH UNIONS WOULD APPEAR TO REFLECT A MEETING OF MINDS, THE JURISDICTIONAL DIVISION OF WORK UNDER WHICH THE PAPERMAKERS UNION AND THE PULP-SULPHITE UNION ACTUALLY OPERATED FOR MORE THAN THE PAST TWENTY YEARS AT THE COMPLAINANT'S STURGEON FALLS MILL BEARS NO RESEMBLANCE TO THE 1947 "AGREEMENT" IF IT CAN BE SO DESCRIBED.

17. THE FACT IS THAT BETWEEN 1947 AND 1964, IN THE COMPLAINANT'S PULPMaking OPERATION UNDER THE ROTARY DIGESTER SYSTEM, THE PULP-SULPHITE UNION HAD COMPLETE JURISDICTION OVER THE COOKING PROCESS, FROM THE REMOVAL OF THE CHIP FROM THE BIN TO THE DEPOSITING OF THE CHIPS IN THE LEACH CASTER PITS. THE PAPERMAKERS UNION, ON THE OTHER HAND, HAD COMPLETE JURISDICTION OVER THE REFINING PROCESS FROM THE EXTRACTING OF THE COOKED CHIPS FROM THE LEACH CASTER PITS TO THE FEEDING OF THE STOCK TO THE PAPER MACHINES. IN 1964, THE PAPERMAKERS UNION VOLUNTARILY RELINQUISHED ITS ESTABLISHED JURISDICTION OVER THE WORK OF THE REFINER OPERATOR'S HELPER IN FAVOUR OF THE PULP-SULPHITE UNION SO THAT AS MEMBERS OF THE LATTER UNION THEY WOULD BE ABLE TO ACQUIRE SENIORITY FOR OTHER JOBS IN THE MILL. NOTWITHSTANDING THIS VARIATION DURING THE LAST FOUR YEARS THE ROTARY DIGESTER SYSTEM WAS IN OPERATION, IN GENERAL TERMS, THE JURISDICTIONAL DIVISION ACCEPTED BY BOTH UNIONS WAS THAT PERSONS EMPLOYED IN THE JOB CLASSIFICATIONS DIRECTLY RELATED TO THE COOKING PROCESS WERE MEMBERS OF THE PULP-SULPHITE UNION AND PERSONS EMPLOYED IN JOB CLASSIFICATIONS DIRECTLY RELATED TO THE REFINING PROCESS WERE MEMBERS OF THE PAPERMAKERS UNION.

18. IT IS IMPORTANT TO UNDERSTAND THE LINES OF PROMOTIONAL PROGRESSION AS THEY RELATE TO THE WORK JURISDICTIONS OF THE RESPONDENT UNIONS. THE LINE OF PROGRESSION IN THE COOKING PROCESS WAS FROM THE LABOUR POOL TO CHIP CONVEYOR AND LOADERMAN TO COOK'S HELPER TO DIGESTER COOK. THE LINE OF PROGRESSION IN THE REFINING

PROCESS WAS FROM THE LABOUR POOL, ALL OF WHOM WERE MEMBERS OF THE PULP-SULPHITE UNION, TO REFINER OPERATOR HELPER TO REFINER OPERATOR. PRIOR TO 1964 WHEN AN EMPLOYEE FROM THE LABOUR POOL BECAME A REFINER OPERATOR HELPER HE RESIGNED HIS MEMBERSHIP IN THE PULP-SULPHITE UNION AND BECAME A MEMBER OF THE PAPERMAKERS UNION. AFTER 1964 THE CHANGE IN UNION AFFILIATION DID NOT TAKE PLACE UNTIL THE REFINER OPERATOR HELPER WAS PROMOTED TO REFINER OPERATOR. ACCORDING TO THE EVIDENCE IT IS NOT UNCOMMON FOR LINES OF PROGRESSION TO CUT ACROSS THE JURISDICTIONAL BAILIWICKS OF THE TWO UNIONS.

19. WHEN THE COMPLAINANT OPERATED UNDER THE ROTARY DIGESTER SYSTEM WITH ITS DISTINCT COOKING AND REFINING PROCESSES WHICH REQUIRED A CREW OF FIVE TO OPERATE, THE TWO LINES OF PROGRESSION WERE BOTH LOGICAL AND REASONABLE. UNDER THE CONTINUOUS DIGESTER SYSTEM WHICH INTEGRATES THE COOKING AND REFINING PROCESSES INTO A SINGLE SYSTEM REQUIRING ONLY A CREW OF TWO TO OPERATE, THE CHANGE BY THE COMPLAINANT TO A SINGLE LINE OF PROGRESSION WAS CLEARLY SENSIBLE FOR PURPOSES OF EFFICIENCY AND ECONOMY.

20. WE FIND ON THE EVIDENCE THAT THE WORK ASSIGNED TO NO. 1 PULPMAKER MOST CLOSELY RESEMBLES THAT FORMERLY PERFORMED BY THE REFINER OPERATOR. WE FIND FURTHER THAT THE WORK ASSIGNED TO NO. 2 PULPMAKER MOST CLOSELY RESEMBLES THAT FORMERLY PERFORMED BY THE COOK OR COOK'S HELPER. ALTHOUGH A NOT INCONSIDERABLE PART OF THE FORMER COOKING PROCESS HAS BEEN INCORPORATED INTO THE JOB FUNCTIONS OF NO. 1 PULPMAKER, IT IS ONLY THOSE PARTS THAT HAVE BECOME AUTOMATED BY THE NEW SYSTEM AND ARE REGULATED AND CONTROLLED FROM THE CENTRAL PANEL. UNDER THE OLD SYSTEM MUCH OF THE COOKING PROCESS WAS PERFORMED MANUALLY. THAT PART OF THE COOKING PROCESS WHICH IS STILL LARGELY PERFORMED MANUALLY, AND IN PARTICULAR THE PREPARATION OF THE COOKING LIQUOR, IS NOW DONE BY NO. 2 PULPMAKER, FORMERLY A COOK OR COOK'S HELPER. IN OTHER WORDS, AS CLOSELY AS IT WAS FEASIBLE TO DO SO UNDER THE CONTINUOUS DIGESTER SYSTEM, IN ASSIGNING THE JOB FUNCTIONS OF NO. 1 PULPMAKER TO THE PAPERMAKERS UNION AND THE JOB FUNCTIONS OF NO. 2 PULPMAKER TO THE PULP-SULPHITE UNION, THE COMPLAINANT ADHERED TO THE PAST JURISDICTIONAL DIVISION BETWEEN THE RESPONDENT UNIONS AT THE STURGEON FALLS MILLS. WE WOULD MENTION THE EVIDENCE OF PRACTICE AT OTHER MILLS WAS SUFFICIENTLY DISSIMILAR FROM THE COMPLAINANT'S OPERATIONS AS TO BE OF NO HELP TO THE BOARD.

21. IT IS OUR CONCLUSION BASED ON ALL THE EVIDENCE THAT THERE IS NO REASON FOR THE BOARD TO ALTER THE ASSIGNMENT OF WORK ALREADY MADE BY THE COMPLAINANT. WE WOULD ADD THAT HAVING REGARD TO THE HISTORY OF LINES OF PROGRESSION CUTTING ACROSS THE WORK JURISDICTIONS STAKED OUT BY THE TWO RESPONDENT UNIONS, WE DO NOT FIND THE PRESENT LINE OF PROGRESSION AN IMPEDIMENT TO OUR UPHOLDING THE WORK ASSIGNMENT MADE BY THE COMPLAINANT.

22. THE BOARD THEREFORE DIRECTS THAT IN ITS PULP MILL AT STURGEON FALLS, THE COMPLAINANT CONTINUE TO ASSIGN THE WORK OF NO. 1 PULPMAKER TO MEMBERS OF THE UNITED PAPER MAKERS AND PAPER WORKERS, LOCAL 135 AND CONTINUE TO ASSIGN THE WORK OF NO. 2 PULPMAKER TO MEMBERS OF THE INTERNATIONAL BROTHERHOOD OF PULP, SULPHITE AND PAPER MILL WORKERS, LOCAL NO. 71.

INDEXED ENDORSEMENTS - RECONSIDERATION OF BOARD'S DECISION -
CERTIFICATION

15312-68-R: UNITED STEELWORKERS OF AMERICA (APPLICANT) V. PRODUCERS
CONTAINER (CANADA) LTD. (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: RORY F. EGAN, VICE-CHAIRMAN, AND BOARD MEMBERS
H.F. IRWIN AND P.J. O'KEEFE.

DECISION OF VICE-CHAIRMAN, RORY F. EGAN, AND BOARD MEMBER
P.J. O'KEEFE: DECEMBER 17, 1968.

1. UNDER COVER OF A LETTER DATED DECEMBER 11, 1968, A NUMBER OF THE GROUP OF EMPLOYEES, OBJECTORS, HAVE SUBMITTED TO THE BOARD FOUR SIGNED DOCUMENTS BEARING THE HEADING "NOTICE OF DESIRE TO MAKE ADDITIONAL REPRESENTATIONS". THE LETTER REQUESTS A REHEARING OF THIS MATTER TO PERMIT THE EMPLOYEES CONCERNED TO MAKE ADDITIONAL REPRESENTATIONS. THE DOCUMENTS PURPORT TO BE SIGNED BY 8 EMPLOYEES WHO SIGNED THE ORIGINAL NOTICE OF OBJECTION, AND 5 WHO HAD ORIGINALLY SIGNED UNION CARDS.

2. THE FOUR NOTICES OF DESIRE CONTAIN IDENTICAL PARAGRAPHS NUMBERED 3 AND 4. PARAGRAPH 3 STATES THAT THE SIGNATORIES BELIEVE THE BOARD WAS NOT MADE AWARE OF ALL THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE NOTICE OF OBJECTION AND THE SIGNATURES THEREON.

3. THE PARAGRAPH NUMBER 4 ALLEGES THAT THE FAILURE OF EVIDENCE TO ADEQUATELY DISCLOSE THE CIRCUMSTANCES HAS PREJUDICED "OUR RIGHT TO VOTE TO DETERMINE THE TRUE WISHES OF THE EMPLOYEES".

4. THE BOARD TREATS THE LETTER AND THE ACCOMPANYING DOCUMENTS AS AN APPLICATION FOR RECONSIDERATION UNDER SECTION 79 SUBSECTION 1 OF THE LABOUR RELATIONS ACT.

5. THE TWO WITNESSES WHO APPEARED BEFORE THE BOARD WERE EXAMINED BY THE BOARD IN ACCORDANCE WITH ITS LONG ESTABLISHED PRACTICE WITH RESPECT TO PETITIONS. AT THE CONCLUSION OF THE BOARD'S EXAMINATION, COUNSEL FOR THE PETITIONERS OR OBJECTORS WAS AFFORDED THE OPPORTUNITY TO SUGGEST FURTHER QUESTIONS TO BE

PUT BY THE BOARD TO THE WITNESSES ON THE SUBJECT OF THE ORIGIN-
ATION AND CIRCULATION OF THE PETITION. A SIMILAR OPPORTUNITY
WAS GIVEN TO COUNSEL FOR THE APPLICANT AND TO COUNSEL FOR THE
RESPONDENT. AT THE CONCLUSION OF THE EVIDENCE, ALL PARTIES
WERE INVITED TO MAKE REPRESENTATIONS WITH RESPECT TO THE VALI-
DITY OF THE PETITION AND DID SO.

6. THERE IS NOTHING IN THE LETTER OF DECEMBER 11, 1968
NOR IN THE NOTICES OF DESIRE WHICH INDICATES THAT THERE IS ANY
NEW EVIDENCE OR ARGUMENT NOW AVAILABLE TO THE PETITIONERS WHICH
WAS NOT AVAILABLE TO THEM AT THE TIME OF THE HEARING.

7. THE BOARD THEREFORE DOES NOT CONSIDER IT ADVISABLE TO
RECONSIDER ITS DECISION IN THIS MATTER, AND THE REQUEST OF THE
PETITIONERS IS ACCORDINGLY DENIED.

DECISION OF BOARD MEMBER H.F. IRWIN: DECEMBER 17, 1968.

WITHOUT DEROGATING FROM MY DISSENT DATED NOVEMBER 27,
1968, IN THIS MATTER, I CONCUR WITH THE MAJORITY DECISION WHEREIN
THE RESPONDENT'S REQUEST FOR RECONSIDERATION IS DENIED.

15315-68-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTER-
NATIONAL UNION A.F.L. - C.I.O. - C.L.C. LOCAL 197 (APPLICANT) V.
NICK MASNEY HOTELS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES
(OBJECTORS).

DECISION OF THE BOARD: DECEMBER 12, 1968.

1. THIS MATTER CAME ON FOR HEARING ON NOVEMBER 21ST, 1968,
AND THE BOARD BY ITS DECISION DATED NOVEMBER 25TH, 1968 CERTIFIED
THE APPLICANT AS BARGAINING AGENT FOR CERTAIN EMPLOYEES OF THE
RESPONDENT.

2. NOTICE TO EMPLOYEES OF APPLICATION FOR CERTIFICATION AND
OF HEARING (FORM 5) WAS FORWARDED TO THE RESPONDENT BY REGISTERED
MAIL DATED NOVEMBER 7TH, 1968 FOR POSTING ON THE RESPONDENT'S
PREMISES. THE BOARD WAS ADVISED BY THE RESPONDENT THAT THE SAID
NOTICES WERE POSTED BY THE RESPONDENT ON NOVEMBER 8TH, 1968.

3. ITEMS 3 AND 8 OF FORM 5 READ AS FOLLOWS:

3. THE HEARING OF THE APPLICATION BY THE BOARD
WILL TAKE PLACE AT ITS BOARD ROOM, 8 YORK STREET,

TORONTO 1, ONTARIO, ON THURSDAY, THE 21ST DAY OF NOVEMBER, 1968, AT 9:15 O'CLOCK IN THE FORENOON.(E.S.T.)

8. ANY EMPLOYEE, OR GROUP OF EMPLOYEES, WHO HAS INFORMED THE BOARD IN WRITING OF HIS OR THEIR DESIRE IN ACCORDANCE WITH PARAGRAPHS 5 AND 6 MAY ATTEND AND BE HEARD AT THE HEARING IN PERSON OR BY A REPRESENTATIVE. ANY EMPLOYEE OR REPRESENTATIVE WHO APPEARS AT THE HEARING WILL BE REQUIRED TO TESTIFY, OR PRODUCE A WITNESS OR WITNESSES WHO WILL BE ABLE TO TESTIFY FROM HIS OR THEIR PERSONAL KNOWLEDGE AND OBSERVATION, AS TO (A) THE CIRCUMSTANCES CONCERNING THE ORIGINATION OF THE MATERIAL FILED, AND (B) THE MANNER IN WHICH EACH OF THE SIGNATURES WAS OBTAINED.

THE BOARD MAY DISPOSE OF THE APPLICATION WITHOUT FURTHER NOTICE AND WITHOUT CONSIDERING THE STATEMENT OF DESIRE OF ANY PERSON WHO FAILS TO ATTEND.*

*EXPLANATORY NOTE: WHERE EMPLOYEES FAIL TO ATTEND IN PERSON OR BY A REPRESENTATIVE OR TO TESTIFY OR PRODUCE WITNESSES TO TESTIFY AS PROVIDED IN PARAGRAPH 8 ABOVE, THE BOARD NORMALLY DOES NOT ACCEPT THE STATEMENT OF DESIRE AS CASTING DOUBT ON THE EVIDENCE OF MEMBERSHIP FILED BY THE APPLICANT.

4. CERTAIN EMPLOYEES OF THE RESPONDENT FILED A STATEMENT OF DESIRE WHEREIN THEY STATED THEY DID NOT WISH TO BE REPRESENTED BY THE APPLICANT. HOWEVER, NO ONE APPEARED AT THE HEARING TO TESTIFY IN SUPPORT OF THE STATEMENT FILED IN OPPOSITION TO THE APPLICATION.

5. ON DECEMBER 6TH, 1968, THE BOARD RECEIVED A LETTER DATED DECEMBER 4TH, 1968 FROM A FIRM OF SOLICITORS IN HAMILTON WHICH READS AS FOLLOWS:

I REPRESENT THE GROUP OF EMPLOYEES (OBJECTORS) WHO SIGNED A STATEMENT DATED NOVEMBER 11, 1968 OPPOSING THE UNION'S APPLICATION TO BECOME THE BARGAINING AGENT FOR THE EMPLOYEES AT THE COLLINS HOTEL IN DUNDAS. I HAVE SPOKEN PERSONALLY TO THE EMPLOYEES WHO HAVE SIGNED THE ENCLOSED STATEMENTS, BEING SIX IN NUMBER. THE REMAINING FOUR EMPLOYEES WHO SIGNED THE STATEMENT OF NOVEMBER 11, 1968 WERE NOT AT THE COLLINS HOTEL WHEN I ATTENDED THERE TODAY, BUT I AM INFORMED BY THOSE WHO SIGNED THE ENCLOSED STATEMENTS THAT THOSE I HAVE NOT SPOKEN TO TAKE THE EXACT SAME POSITION AS THOSE I HAVE SPOKEN TO.

IF NECESSARY I CAN AND WILL OBTAIN STATEMENTS FROM THE REMAINING FOUR.

AS INDICATED IN THE ENCLOSED STATEMENTS THE EMPLOYEES THAT I REPRESENT ARE GENUINELY OPPOSED TO THE UNION BEING THEIR BARGAINING AGENT AND THEY REPRESENT MORE THAN 50% OF THE EMPLOYEES WHO WORK AT THE COLLINS HOTEL. THEY DID NOT ATTEND THE HEARING OF NOVEMBER 21ST, 1968 SIMPLY BECAUSE THEY WERE TOLD BY MR. MASNEY THAT THE HEARING WOULD NOT TAKE PLACE ON THAT DATE BUT RATHER THAT IT WAS GOING TO BE ADJOURNED.

IT IS OBVIOUS FROM TALKING TO THE EMPLOYEES THAT THEY ARE NOT FAMILIAR WITH THE KIND OF PROCEEDINGS THAT THEY ARE NOW INVOLVED IN AND I TRUST YOU CAN READILY UNDERSTAND THAT THEY WOULD NOT THINK TO VERIFY WITH THE BOARD THE QUESTION OF AN ADJOURNMENT.

AS A RESULT OF THEIR RELIANCE ON MR. MASNEY'S STATEMENT THAT THE HEARING WOULD NOT TAKE PLACE ON NOVEMBER 21, 1968, THEY HAVE LOST THEIR OPPORTUNITY OF VOICING TO YOU THEIR OPPOSITION TO THE UNION'S APPLICATION.

I ASK YOU PLEASE TO EXTEND TO THEM THE OPPORTUNITY OF BEING HEARD. SPECIFICALLY, I ASK THAT YOU EXERCISE YOUR DISCRETION UNDER SECTION 79(1) OF THE LABOUR RELATIONS ACT AND DIRECT A NEW HEARING.

ALL OF THE EMPLOYEES TO WHOM I HAVE SPOKEN HAVE INDICATED TO ME THAT ABSOLUTELY NO PRESSURE WAS PLACED ON THEM BY THEIR EMPLOYER TO TAKE THE POSITION THAT THEY HAVE AND THAT THEY ARE NOW TAKING.

I WOULD BE PLEASED TO HEAR FROM YOU AS SOON AS POSSIBLE.

6. THE RESPONDENT'S REQUEST FOR ADJOURNMENT WHICH WAS REFERRED TO IN THE LETTER SET OUT ABOVE WAS DEALT WITH BY THE BOARD IN ITS DECISION DATED NOVEMBER 25TH, 1968, IN THIS MATTER.

7. THE HEARING WHICH WAS SCHEDULED FOR NOVEMBER 21ST, PURSUANT TO THE NOTICE TO EMPLOYEES, PROCEEDED IN ACCORDANCE WITH THAT NOTICE.

8. IT WOULD APPEAR FROM THE FACTS SET OUT ABOVE AND THE STATEMENTS CONTAINED IN THE LETTER FROM THE OBJECTORS' SOLICITORS THAT THE EMPLOYEES CHOSE TO ACCEPT THE RESPONDENT'S ADVICE OR COUNSEL THAT THE HEARING WOULD NOT TAKE PLACE ON NOVEMBER 21ST BUT RATHER

THAT THE HEARING WAS GOING TO BE ADJOURNED. THE BOARD, OF COURSE, CANNOT ACCEPT ANY RESPONSIBILITY FOR THE ADVICE GIVEN TO THE EMPLOYEES BY THE RESPONDENT. IF THE EMPLOYEES CHOSE TO ACCEPT THE INFORMATION GIVEN TO THEM BY THE RESPONDENT, WHICH WAS CONTRARY TO THE INFORMATION CONTAINED IN FORM 5, THE EMPLOYEES MUST DO SO AT THEIR PERIL.

9. ON THE BASIS OF THE ABOVE EVIDENCE, IT IS ABUNDANTLY CLEAR THAT THE EMPLOYEES CONCERNED HAD AMPLE NOTICE OF THE BOARD HEARING TO BE HELD IN TORONTO ON NOVEMBER 21ST, 1968. THEY FAILED TO APPEAR AT THE HEARING BECAUSE THEIR EMPLOYER TOOK IT UPON HIMSELF TO ADVISE THEM THAT THE HEARING WOULD BE ADJOURNED. THE EMPLOYEES DID NOT ATTEMPT TO CONFIRM THIS ADVICE WITH THE LABOUR RELATIONS BOARD.

10. THE RESPONDENT IN THIS MATTER WOULD NOT BE ABLE TO FORTIFY HIS REQUEST THAT THE MATTER BE ADJOURNED BECAUSE OF HIS ACTIONS IN NOTIFYING THE EMPLOYEES THAT AN ADJOURNMENT WOULD TAKE PLACE. IN THE SAME WAY, THE OBJECTING EMPLOYEES CANNOT RELY UPON ADVICE RECEIVED FROM A PARTY WHO IS ALSO ADVERSE IN INTEREST TO THE APPLICANT IN ORDER TO BOLSTER ITS REQUEST FOR A NEW HEARING WHEN THEY HAD FULL OPPORTUNITY TO PRESENT THEMSELVES AT THE HEARING HELD ON NOVEMBER 21ST, 1968 IN ACCORDANCE WITH THE OFFICIAL NOTICE OF HEARING WHICH WAS GIVEN TO THE EMPLOYEES. SINCE THE EMPLOYEES CHOSE TO TAKE COUNSEL FROM THE EMPLOYER IN THIS CASE, THEY MUST ASSUME RESPONSIBILITY FOR ANY ERROR MADE BY THE EMPLOYER. IN THE ADDRESSOGRAPH-MULTIGRAPH OF CANADA LIMITED CASE, O.L.R.B. MONTHLY REPORT, MARCH 1968, P. 1183, THE BOARD STATED IN PART AS FOLLOWS:

WHILE COUNSEL FOR THE INTERVENER ARGUED THAT HIS CLIENT SHOULD NOT BE SADDLED WITH HIS MISTAKE OR THE MISTAKE OF HIS EMPLOYEE, THE BOARD IS OF OPINION THAT A CLIENT MUST ASSUME RESPONSIBILITY FOR THE MISTAKE OF HIS SOLICITOR. IT CANNOT SERIOUSLY BE ARGUED THAT LEGAL COUNSEL CAN MAKE MISTAKES WITH IMPUNITY OR THAT THEIR MISTAKES DO NOT CARRY THE SAME WEIGHT AS SIMILAR MISTAKES MADE PERSONALLY BY A PARTY. WE ARE OF THE VIEW THAT COUNSEL'S RESPONSIBILITIES ARE NO LESS ONEROUS THAN THE RESPONSIBILITIES IMPOSED UPON A PARTY IN ANY PROCEEDING AND A PARTY CANNOT EVADE THE RESULTS OF MISTAKES MADE BY COUNSEL RETAINED BY THE PARTY.

11. WHILE THE FACTS OF THE ADDRESSOGRAPH CASE WERE DIFFERENT FROM THE FACTS BEFORE US, THE REASONING SET FORTH IN THE PARAGRAPH QUOTED ABOVE APPEARS TO BE APPLICABLE TO THE FACTS OF THIS CASE

IN THAT THE OBJECTING EMPLOYEES RELIED UPON THE ADVICE GIVEN BY THE RESPONDENT WHO IS ALSO OPPOSING THE APPLICANT'S APPLICATION. SEE ALSO 500 DAIRIES LIMITED CASE, O.L.R.B. MONTHLY REPORT, APRIL 1968, P. 115.

12. HAVING REGARD TO THE SPECIFIC PROVISIONS CONTAINED IN ITEM 8 OF FORM 5 QUOTED ABOVE AND ESPECIALLY THE EXPLANATORY NOTE SET FORTH THEREIN, AND FOR THE REASONS SET OUT ABOVE, THE BOARD IS OF OPINION THAT WHERE OBJECTING EMPLOYEES CHOOSE TO RELY UPON ADVICE GIVEN TO THEM BY THE EMPLOYER, WHICH ADVICE IS CONTRARY TO THE SPECIFIC INSTRUCTIONS GIVEN TO THEM BY THE BOARD, THEY CANNOT SUBSEQUENTLY BE HEARD TO ARGUE THAT THEY DID NOT HAVE PROPER NOTICE OF HEARING OF AN APPLICATION FOR CERTIFICATION. IF, HOWEVER, THE APPLICANT UNION HAD DELIBERATELY MISINFORMED THE EMPLOYEES ON THE QUESTION OF THE HEARING DATE, THE UNION OF COURSE COULD NOT TAKE ADVANTAGE OF SUCH A SITUATION. HOWEVER THAT MAY BE, WHERE TWO PARTIES ARE OPPOSED TO AN APPLICANT UNION, ONE PARTY CANNOT RELY UPON ERRONEOUS INFORMATION PROVIDED BY THE OTHER TO THE DETRIMENT OF THE APPLICANT. IF THE OBJECTING EMPLOYEES' REQUESTS WERE TO BE GRANTED IN THIS CASE THE BOARD WOULD HAVE TO REVOKE ITS CERTIFICATE DATED NOVEMBER 25TH TO THE APPLICANT'S DETRIMENT.

13. THE BOARD THEREFORE IS OF OPINION THAT SINCE THE OBJECTING EMPLOYEES HAD ADEQUATE NOTICE AND FULL OPPORTUNITY TO ATTEND AT THE HEARING ON NOVEMBER 21ST TO PRESENT ANY EVIDENCE THAT THEY WISHED TO CALL AND TO MAKE ANY ARGUMENT THAT WAS AVAILABLE TO THEM, THE BOARD THEREFORE DOES NOT CONSIDER IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION DATED NOVEMBER 25TH, 1968, IN THIS MATTER.

14. THE BOARD IS THEREFORE NOT PREPARED TO ACCEDE TO THE REQUEST OF THE OBJECTING EMPLOYEES IN THIS CASE AS CONTAINED IN THE LETTER FROM THEIR SOLICITORS DATED DECEMBER 4TH, 1968, AND THE OBJECTING EMPLOYEES' REQUEST THAT THE BOARD HOLD A FURTHER HEARING IN THIS MATTER IS THEREFORE DENIED.

15315-68-R: HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION A.F.L.-C.I.O. - C.L.C. LOCAL 197 (APPLICANT) V. NICK MASNEY HOTELS LIMITED (RESPONDENT) V. GROUP OF EMPLOYEES (OBJECTORS).

BEFORE: J.D. O'SHEA, VICE-CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 18, 1968.

1. THE RESPONDENT IN THIS MATTER HAS REQUESTED THE BOARD TO REVIEW ITS DECISION DATED NOVEMBER 25TH, 1968 IN THIS CASE FOR THE REASONS SET FORTH IN A LETTER FROM THE SOLICITOR FOR THE RESPONDENT DATED DECEMBER 11TH, 1968.

2. THE RESPONDENT'S SOLICITOR STATES THAT ON NOVEMBER 20TH, 1968 HE REQUESTED AN ADJOURNMENT OF THE HEARING IN THIS MATTER BECAUSE IT WAS NECESSARY FOR HIM TO "APPEAR BEFORE THE ONTARIO MUNICIPAL BOARD IN HAMILTON AT A SPECIAL SITTING CALLED AND WHICH DATE HAD BEEN SETTLED LONG IN ADVANCE OF THIS APPLICATION." THE RESPONDENT'S REQUEST FOR AN ADJOURNMENT WAS MADE ON THE DAY PRIOR TO THE HEARING WHEN THE RESPONDENT'S SOLICITOR KNEW WELL IN ADVANCE OF THE APPLICATION BEING MADE THAT HE WOULD BE UNABLE TO ATTEND AT THE HEARING WHICH WAS SCHEDULED FOR NOVEMBER 21ST. THE RESPONDENT CANNOT THEREFORE LEGITIMATELY COMPLAIN WHEN THE RESPONDENT WAS ADVISED ON THE SAME DAY HIS REQUEST WAS MADE THAT THE APPLICANT WOULD NOT AGREE TO THE ADJOURNMENT OF THIS MATTER.

3. THE RESPONDENT ALSO TAKES THE POSITION THAT IN VIEW OF THE FACT THAT THE REQUEST FOR AN ADJOURNMENT WAS REFUSED AT APPROXIMATELY 5:00 P.M. ON THE DAY PRIOR TO THE HEARING, THE RESPONDENT WAS "THEN" UNABLE TO ASSEMBLE OUR WITNESSES FOR THE HEARING AND AT SUCH A LATE STAGE TO ENGAGE OTHER COUNSEL." AS STATED ABOVE, COUNSEL FOR THE RESPONDENT KNEW WELL IN ADVANCE OF THE APPLICATION THAT HE WOULD BE UNABLE TO ATTEND THE HEARING, NOTICE OF WHICH WAS SENT TO THE RESPONDENT BY REGISTERED MAIL ON NOVEMBER 7TH, 1968. IT WAS THE DUTY OF THE RESPONDENT'S SOLICITOR TO ADVISE THE RESPONDENT ON THE DATE HE WAS RETAINED THAT HE WOULD BE UNABLE TO ATTEND THE HEARING WHICH WAS SCHEDULED IN THIS MATTER. IF THIS HAD BEEN DONE, THE RESPONDENT COULD HAVE RETAINED OTHER COUNSEL. COUNSEL FOR THE RESPONDENT ALSO STATES THAT THE RESPONDENT WAS UNABLE "TO ASSEMBLE WITNESSES". IT IS TO BE NOTED THAT NO CHARGES OF UNFAIR CONDUCT WERE MADE BY OR AGAINST THE RESPONDENT AND THEREFORE THERE WAS NO NECESSITY TO CALL WITNESSES AT THE HEARING IN THIS MATTER. IF A DISPUTE HAD ARISEN WITH RESPECT TO THE DESCRIPTION OF THE BARGAINING UNIT THIS DISPUTE WOULD HAVE BEEN RESOLVED IN ACCORDANCE WITH THE BOARD'S USUAL PRACTICE WITH THE ASSISTANCE OF AN EXAMINER WHO WOULD HAVE CONVENED A MEETING OF THE PARTIES ON THE RESPONDENT'S PREMISES SOME TIME SUBSEQUENT TO THE HEARING. THE RESPONDENT'S SOLICITOR IS KNOWN TO HAVE APPEARED BEFORE THE BOARD ON SEVERAL OCCASIONS AND IT MUST BE ASSUMED THAT HE WOULD BE AWARE OF THE BOARD'S PRACTICE IN THIS REGARD. IN ANY EVENT, THE GROUND FOR THE RESPONDENT'S REQUEST FOR ADJOURNMENT WAS NOT BASED ON THE FACT THAT THE RESPONDENT WAS UNABLE TO COMPEL THE ATTENDANCE OF ESSENTIAL WITNESSES.

4. THE BOARD IN ITS DECISION OF NOVEMBER 25TH, 1968, NOTED THAT ONE OF THE GROUNDS OF THE APPLICANT'S REFUSAL TO AGREE TO AN EXTENDED ADJOURNMENT WAS THE APPLICANT'S ALLEGATION THAT THE RESPONDENT HAD ATTEMPTED TO INTERFERE WITH THE EMPLOYEES' SELECTION OF A TRADE UNION. THE APPLICANT PUT FORWARD THIS ALLEGATION AS A REASON TO ESTABLISH THAT ITS REFUSAL WAS NOT FRIVOLOUS OR VEXATIOUS. WHILE THE BOARD ACCEPTED THE APPLICANT'S REASONS FOR REFUSING TO AGREE TO THE ADJOURNMENT IT DID NOT ACCEPT THE APPLICANT'S ALLEGATION AS PROOF OF THE FACTS THEREIN ALLEGED. THE APPLICANT CALLED NO EVIDENCE EITHER IN PROOF OF ITS ALLEGATIONS OR EVIDENCE TO SATISFY THE BOARD THAT THE ALLEGATIONS WERE TIMELY. THE ALLEGATIONS WERE ONLY REFERRED TO BY THE APPLICANT IN ORDER TO CLARIFY THE APPLICANT'S REASONS, WHETHER JUSTIFIED OR NOT, FOR REFUSING TO AGREE TO THE REQUESTED ADJOURNMENT. THE BOARD'S DECISION TO REFUSE TO GRANT THE REQUESTED ADJOURNMENT WAS NOT BASED IN ANY WAY ON THE FACT THAT UNFAIR CONDUCT HAD BEEN ALLEGED SINCE THERE WAS NO EVIDENCE CALLED IN SUPPORT OF SUCH UNFAIR CONDUCT. THE BOARD'S DECISION WAS BASED ON THE FACT THAT THE APPLICANT REFUSED TO AGREE TO THE ADJOURNMENT AND NO PROPER REASON WAS ADVANCED IN SUPPORT OF THE RESPONDENT'S REQUEST.

5. THE BOARD IS OF OPINION THAT ALL PARTIES IN THIS MATTER HAD FULL OPPORTUNITY TO PRESENT THEIR EVIDENCE AND TO MAKE THEIR SUBMISSIONS WITH RESPECT THERETO AT THE HEARING ON NOVEMBER 21ST, 1968. FOR THE ABOVE REASONS AND FOR THE REASONS SET FORTH IN THE BOARD'S DECISIONS OF NOVEMBER 25TH AND DECEMBER 12TH, 1968, THE BOARD DOES NOT DEEM IT ADVISABLE TO RECONSIDER, VARY OR REVOKE ITS DECISION OF NOVEMBER 25TH, 1968, IN THIS CASE.

6. THE REQUEST OF THE RESPONDENT IS THEREFORE DENIED.

15393-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CENTRAL STRUCTURES LIMITED (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
E. BOYER AND R.W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 24, 1968.

1. THE APPLICANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION OF DECEMBER 10, 1968 IN WHICH IT CERTIFIED THE APPLICANT FOR ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER WITH CERTAIN EXCEPTIONS NOT HERE MATERIAL. MORE SPECIFICALLY, THE APPLICANT HAS REQUESTED THAT THE BARGAINING UNIT BE AMENDED TO INCLUDE CARPENTERS AND CARPENTERS' APPRENTICES IN ADDITION TO CONSTRUCTION LABOURERS AS SUGGESTED IN ITS APPLICATION.

2. THE RESPONDENT INFORMED THE BOARD THAT IT DID NOT HAVE ANY CARPENTERS WORKING FOR IT ON THE DATE OF THE MAKING OF THE APPLICATION. IT FURTHER APPEARED TO THE BOARD FROM THE REPRESENTATIONS OF THE RESPONDENT THAT THE PERSONS WHOM IT CLASSIFIED AS LABOURERS DID ALL OF THE WORK ON THE PROJECT IN QUESTION AND, MORE PARTICULARLY, THE INSERTION OF PRE-CUT INSULATION MATERIAL AND THE PUTTING TOGETHER OF PRE-ENGINEERED STEEL SECTIONS. THE RESPONDENT FURTHER ALLEGED THAT THERE WAS NO CARPENTERS' WORK INVOLVED IN ITS OPERATIONS.

3. IT IS NOT THE PRACTICE OF THE BOARD TO CERTIFY FOR TRADES WHICH ARE NOT EMPLOYED ON THE DATE OF THE MAKING OF THE APPLICATION. ACCORDINGLY, THE BOARD IN THIS CASE RESTRICTED ITS CERTIFICATE TO CONSTRUCTION LABOURERS. HOWEVER, THE BOARD WISHES TO MAKE IT CLEAR THAT IT INTENDED ITS CERTIFICATE TO COVER ALL OF THE WORK BEING PERFORMED BY THE LABOURERS ON THIS PARTICULAR PROJECT.

4. IF THE BOARD IS IN FACT IN ERROR ON THE FACTS OF THIS CASE, IT WOULD BE PREPARED TO RECONSIDER ITS ORIGINAL DECISION. HOWEVER, THERE IS NOTHING CONTAINED IN THE PRESENT REQUEST OF THE APPLICANT WHICH WOULD WARRANT THE BOARD ALTERING ITS DECISION AND, ACCORDINGLY, THE REQUEST IS DENIED.

INDEXED ENDORSEMENT - RECONSIDERATION OF BOARD'S DECISION - SECTION 65

15377-68-U: RICHARD FREEMAN (COMPLAINANT) V. U.A.W. (RESPONDENT).

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
D.B. ARCHER AND R.W. TEAGLE.

DECISION OF THE BOARD: DECEMBER 31, 1968.

1. THE COMPLAINANT HAS REQUESTED THE BOARD TO RECONSIDER ITS DECISION IN THIS MATTER DATED DECEMBER 10, 1968, DISMISSING A COMPLAINT MADE UNDER SECTION 65 OF THE LABOUR RELATIONS ACT. IN THAT DECISION THE BOARD SAID THAT THE SUBSTANCE OF THE COMPLAINT WAS AGAINST THE RESPONDENT TRADE UNION FOR FAILING TO PROCESS A GRIEVANCE THROUGH TO ARBITRATION. IN THE REQUEST FOR REVIEW THE COMPLAINANT STRESSES THE FACT THAT HIS COMPLAINT IS AGAINST THE EXECUTIVE OF HIS LOCAL UNION (A LOCAL OF THE RESPONDENT TRADE UNION) FOR FAILING TO TAKE HIS GRIEVANCE TO ARBITRATION.

2. AS WAS ALSO POINTED OUT IN OUR ORIGINAL DECISION, IN A COMPLAINT UNDER SECTION 65 OF THE ACT IT MUST BE SHOWN THAT THE AGGRIEVED PERSON HAS BEEN DEALT WITH BY THE RESPONDENT CONTRARY TO THE ACT. THERE IS NOTHING IN THE ORIGINAL COMPLAINT OR IN THE REQUEST FOR REVIEW WHICH INDICATES THAT THE ALLEGED ACTIONS OF THE EXECUTIVE OF THE LOCAL UNION WERE IN ANY WAY CONTRARY TO THE

THE LABOUR RELATIONS ACT. THE SECTIONS RELIED ON BY THE COMPLAINANT, NAMELY, SECTIONS 51, 56 AND 57, ARE NOT APPLICABLE TO THE ALLEGED MISCONDUCT ON THE PART OF THE OFFICERS OF THE LOCAL, NOR ON THE FACTS ALLEGED ARE WE ABLE TO DISCOVER ANY OTHER SECTION OF THE ACT WHICH MIGHT BE APPLICABLE.

3. IN THESE CIRCUMSTANCES THE REQUEST FOR RECONSIDERATION IS DENIED.

EXCERPTS FROM DECISIONS IN CONSTRUCTION INDUSTRY CASES

15378-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL 2486 (APPLICANT) V. C. A. PITTS CONSTRUCTION (ONTARIO) LIMITED, MCNAMARA CORPORATION LIMITED AND ATLAS CONSTRUCTION CO LIMITED (JOINT VENTURE) (RESPONDENT).

6. THE APPLICANT IS PROPOSING A GEOGRAPHIC AREA DESCRIBED AS THE DISTRICT OF TEMISKAMING. IN SUPPORT THEREOF IT HAS FILED FIVE COLLECTIVE AGREEMENTS WITH VARIOUS CONTRACTORS FOR THAT AREA. THE JOB SITE AFFECTED BY THE PRESENT APPLICATION IS IN THE TOWNSHIP OF SOUTH LORRAINE IN THE SAME DISTRICT. THIS TOWNSHIP DOES NOT FALL INTO ANY ESTABLISHED BOARD AREA. THE BOARD IS NOT PREPARED AT THIS TIME TO ESTABLISH A NEW GEOGRAPHIC AREA BUT IT INTENDS IN THE FUTURE TO HOLD A HEARING IN NORTHERN ONTARIO FOR THE PURPOSE OF REVIEWING THE MATTER. ACCORDINGLY AND AS A PURELY INTERIM MEASURE, THE BOARD FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE TOWNSHIP OF SOUTH LORRAINE IN THE DISTRICT OF TEMISKAMING AND THE MUNICIPALITIES IMMEDIATELY ADJACENT THERETO, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(DECEMBER 3, 1968).

15393-68-R: THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (APPLICANT) V. CENTRAL STRUCTURES LIMITED (RESPONDENT).

5. HAVING REGARD TO THE REPRESENTATIONS OF THE PARTIES AND IN ALL THE CIRCUMSTANCES OF THIS CASE, THE BOARD FINDS UNDER SUB-SECTION 1 OF SECTION 6 OF THE LABOUR RELATIONS ACT THAT ALL CONSTRUCTION LABOURERS IN THE EMPLOY OF THE RESPONDENT IN THE DISTRICT OF RAINY RIVER, SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(DECEMBER 10, 1968).

15475-68-R: CHRISTIAN LABOUR ASSOCIATION OF CANADA (APPLICANT) V. OVERHEAD DOOR COMPANY OF OSHAWA (RESPONDENT).

5. THE APPLICANT STATES IN ITS APPLICATION THAT AS OF DECEMBER 13TH, 1968, THE DATE OF THE MAKING OF THE APPLICATION, THE APPLICANT HAD ONLY CARPENTERS IN ITS EMPLOY. ALTHOUGH THE APPLICANT HAS REQUESTED AN ALL EMPLOYEE UNIT, HAVING REGARD TO THE BOARD'S DECISION IN A. K. PENNER AND SONS, O.L.R.B. MONTHLY REPORT, OCTOBER 1966, P. 493, THE BOARD FINDS THAT ALL CARPENTERS AND CARPENTERS' APPRENTICES IN THE EMPLOY OF THE RESPONDENT IN THE COUNTY OF ONTARIO (EXCEPT THE TOWNSHIPS OF PICKERING, RAMA, MARA AND THORAH) AND THE COUNTY OF DURHAM (EXCEPT THE TOWNSHIP OF HOPE), SAVE AND EXCEPT NON-WORKING FOREMEN AND PERSONS ABOVE THE RANK OF NON-WORKING FOREMAN, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(DECEMBER 30, 1968).

15477-68-R: UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA LOCAL UNION 93 (APPLICANT) V. STRADWICK INDUSTRIES LTD. (RESPONDENT).

5. HAVING REGARD TO THE PROVISIONS OF SECTION 6(1) OF THE LABOUR RELATIONS ACT, THE BOARD FURTHER FINDS THAT ALL EMPLOYEES OF THE RESPONDENT ENGAGED IN THE INSTALLATION OF FLOOR COVERING IN THE COUNTIES OF CARLETON, RUSSELL AND PRESCOTT, SAVE AND EXCEPT FOREMEN, PERSONS ABOVE THE RANK OF FOREMAN, OFFICE AND SALES STAFF, CONSTITUTE A UNIT OF EMPLOYEES OF THE RESPONDENT APPROPRIATE FOR COLLECTIVE BARGAINING.

(DECEMBER 30, 1968).

TRUSTEESHIP REPORT

T-29-66 THE UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, A.F.L. - C.I.O., AND LOCAL 2965, THE RESILIENT FLOOR WORKERS, UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA.

BEFORE: G.W. REED, Q.C., CHAIRMAN, AND BOARD MEMBERS
F.W. MURRAY AND P.J. O'KEEFFE.

DECISION OF THE BOARD: DECEMBER 10, 1968.

1. BY LETTER DATED NOVEMBER 26, 1968 THE REGISTRAR INFORMED THE PARTIES THAT FOR THE REASONS OUTLINED IN THE SAID LETTER THE BOARD PROPOSED TO TERMINATE THESE PROCEEDINGS, SUBJECT TO ANY REPRESENTATIONS FROM THE PARTIES FILED WITH THE BOARD ON OR BEFORE DECEMBER 5, 1968. NO REPRESENTATIONS HAVE BEEN RECEIVED FROM THE PARTIES.

2. IN THESE CIRCUMSTANCES AND FOR THE REASONS OUTLINED IN THE REGISTRAR'S LETTER OF NOVEMBER 26, 1968 THESE PROCEEDINGS ARE HEREBY TERMINATED.

STATISTICAL TABLES FOR DECEMBER 1968

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER FILED		
		DECEMBER 1968	1ST 9 MONTHS OF 1968-69	FISCAL YEAR 1967-68
I.	CERTIFICATION	66	757	696
II.	DECLARATION TERMINATING BARGAINING RIGHTS	9	50	69
III.	DECLARATION OF SUCCESSOR STATUS	1	11	16
IV.	DECLARATION THAT STRIKE UNLAWFUL	2	32	31
V.	DECLARATION THAT LOCK-OUT UNLAWFUL	1	6	12
VI.	CONSENT TO PROSECUTE	8	87	81
VII.	COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	7	129	134
VIII.	MISCELLANEOUS	<u>11</u>	<u>51</u>	<u>60</u>
TOTAL		<u>105</u>	<u>1123</u>	<u>1099</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

		NUMBER		
		DECEMBER 1968	1ST 9 MONTHS OF 1968-69	FISCAL YEAR 1967-68
HEARINGS AND CONTINUATION OF HEARINGS BY THE BOARD		62	778	663

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS
BOARD BY MAJOR TYPES

	NUMBER DISPOSED OF		
	DECEMBER 1968	1ST 9 MTHS OF FISCAL YR 1968-69	1967-68
I. CERTIFICATION	70	786	718
II. DECLARATION TERMINATING BARGAINING RIGHTS	4	42	67
III. DECLARATION OF SUCCESSOR STATUS	-	13	12
IV. DECLARATION THAT STRIKE UNLAWFUL	2	32	31
V. DECLARATION THAT LOCK- OUT UNLAWFUL	1	5	12
VI. CONSENT TO PROSECUTE	11	80	81
VII. COMPLAINT OF UNFAIR PRACTICE IN EMPLOYMENT (SECTION 65)	14	149	137
VIII. MISCELLANEOUS	<u>6</u>	<u>41</u>	<u>56</u>
TOTAL	<u>108</u>	<u>1148</u>	<u>1114</u>

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS

BOARD BY TYPE AND DISPOSITION

<u>NUMBER OF APPLICATIONS</u>			<u>NUMBER OF EMPLOYEES*</u>		
<u>DECEMBER</u>	<u>1ST 9 MTHS</u>	<u>FISCAL YR.</u>	<u>DECEMBER</u>	<u>1ST 9 MTHS</u>	<u>FISCAL</u>
<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>	<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>

I. CERTIFICATION

GRANTED	50	540	504	1221	17361	17393
DISMISSED	15	176	156	607	6046	10101
WITHDRAWN	<u>5</u>	<u>70</u>	<u>58</u>	<u>26</u>	<u>1115</u>	<u>1247</u>
TOTAL	<u>70</u>	<u>786</u>	<u>718</u>	<u>1854</u>	<u>24522</u>	<u>28741</u>

II. TERMINATION
OF BARGAINING
RIGHTS

GRANTED	2	23	31	75	584	738
DISMISSED	2	15	34	21	534	935
WITHDRAWN	<u>-</u>	<u>4</u>	<u>2</u>	<u>-</u>	<u>108</u>	<u>41</u>
TOTAL	<u>4</u>	<u>42</u>	<u>67</u>	<u>96</u>	<u>1226</u>	<u>1714</u>

*THESE FIGURES REFER TO THE NUMBER OF EMPLOYEES DIRECTLY AFFECTED AND ARE BASED ON THE NUMBER OF EMPLOYEES IN THE BARGAINING UNITS AT THE TIME THE APPLICATIONS FOR CERTIFICATION WERE FILED WITH THE BOARD. TOTALS FOR APPLICATIONS DISMISSED AND WITHDRAWN ARE APPROXIMATE.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD

BY TYPE AND DISPOSITION (CONTINUED)

		<u>NUMBER OF APPLICATIONS</u>		
		<u>DECEMBER</u>	<u>1ST 9 MTHS</u>	<u>FISCAL YR.</u>
		<u>1968</u>	<u>1968-69</u>	<u>1967-68</u>
III.	<u>DECLARATION THAT STRIKE</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	1	3
	DISMISSED	-	2	3
	WITHDRAWN	<u>2</u>	<u>29</u>	<u>25</u>
	TOTAL	<u>2</u>	<u>32</u>	<u>31</u>
IV.	<u>DECLARATION THAT LOCKOUT</u>			
	<u>UNLAWFUL</u>			
	GRANTED	-	-	-
	DISMISSED	1	3	1
	WITHDRAWN	<u>-</u>	<u>2</u>	<u>11</u>
	TOTAL	<u>1</u>	<u>5</u>	<u>12</u>
V.	<u>CONSENT TO PROSECUTE</u>			
	GRANTED	11	22	5
	DISMISSED	-	12	8
	WITHDRAWN	<u>-</u>	<u>46</u>	<u>68</u>
	TOTAL	<u>11</u>	<u>80</u>	<u>81</u>
VI.	<u>COMPLAINT OF UNFAIR</u>			
	<u>PRACTICE IN EMPLOYMENT</u>			
	<u>(SECTION 65)</u>			
	GRANTED	1	8	2
	DISMISSED	4	37	16
	WITHDRAWN	<u>9</u>	<u>104</u>	<u>32</u>
	TOTAL	<u>14</u>	<u>149</u>	<u>50</u>

TABLE V

REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS DISPOSED OF BY

THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	DECEMBER 1968	1ST 9 MTHS 1968-69	FISCAL YR. 1967-68
<u>CERTIFICATION AFTER VOTE*</u>			
PRE-HEARING VOTE	-	12	12
POST-HEARING VOTE	3	37	33
BALLOTS NOT COUNTED	-	-	-
 <u>DISMISSED AFTER VOTE</u>			
PRE-HEARING VOTE	2	4	11
POST-HEARING VOTE	5	28	29
BALLOTS NOT COUNTED	-	1	3
TOTAL	<u>10</u>	<u>82</u>	<u>88</u>

*INCLUDES APPLICANT-INTERVENER APPLICATIONS IN WHICH BOTH APPLICANT AND INTERVENER APPLY FOR A NEW UNIT AND EITHER APPLICANT OR INTERVENER IS CERTIFIED.

TABLE VI

REPRESENTATION VOTES IN TERMINATION APPLICATIONS DISPOSED OF BY

THE ONTARIO LABOUR RELATIONS BOARD

	NUMBER OF VOTES		
	DECEMBER 1968	1ST 9 MTHS 1968-69	FISCAL YR. 1967-68
*RESPONDENT UNION SUCCESSFUL	2	2	1
RESPONDENT UNION UNSUCCESSFUL	2	16	15
TOTAL	<u>4</u>	<u>18</u>	<u>16</u>

*IN TERMINATION PROCEEDINGS WHERE A VOTE IS TAKEN THE APPLICANT IS A GROUP OF EMPLOYEES OR THE EMPLOYER; THE INCUMBENT UNION IS THUS THE RESPONDENT.

RECEIVED: APR 7 1972

